

Senate Bill 439

By: Senators Sims of the 12th, Tippins of the 37th, Tate of the 38th, Parent of the 42nd, Williams of the 39th and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 3 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated,  
2 relating to local boards of education, so as to provide for withholding of funds at the  
3 discretion of the State Board of Education for a local board of education that receives an  
4 audit report of findings of irregularities or budget deficits for three consecutive years or that  
5 fails to complete a corrective action plan; to provide for removal of members of a local board  
6 of education if a local board of education receives an audit report of findings of irregularities  
7 or budget deficits for three consecutive years; to provide for temporary replacement  
8 members; to provide for petitions for reinstatement; to provide for a hearing; to provide for  
9 related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 3 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to local  
13 boards of education, is amended by revising Code Section 20-2-67, relating to local school  
14 system or school subject to corrective action plan for budget deficit, financial operations  
15 form, publication, and mailing to Department of Education and local governing body, as  
16 follows:

17 "20-2-67.

18 (a) When an audit by the Department of Audits and Accounts finds and reports  
19 irregularities or budget deficits in the fund accounting information regarding a local school  
20 system or a school within the local school system, the Department of Audits and Accounts  
21 shall report the findings of irregularities or budget deficits to the State Board of Education  
22 and the local board of education.

23 (b) The State Board of Education shall inform the superintendent of the local school  
24 system of the irregularities or budget deficits regarding a local school system's or a school's  
25 fund accounting information. The superintendent shall submit to the Department of  
26 Education a response to the findings and a corrective action plan as defined by rules and

27 regulations adopted by the State Board of Education designed to correct the financial  
 28 irregularities or budget deficits for the school or school system. From the time such  
 29 irregularity or budget deficit is discovered until the time it is eliminated, the local school  
 30 superintendent shall present to each member of the local board of education for his or her  
 31 review and written acknowledgment a monthly report containing all anticipated  
 32 expenditures by budget function for such school or school system during the current month.  
 33 The report shall be presented to local board members on or before the tenth business day  
 34 of each month. Each monthly report shall be signed by each member of that local board  
 35 and recorded and retained in the minutes of the meeting of the local board of education.

36 (c) Not later than September 30 of the year, each local board of education shall cause to  
 37 be published in the official county organ wherein the local school system is located once  
 38 a week for two weeks a statement of actual financial operations for such schools or school  
 39 system identified by the Department of Audits and Accounts as having financial  
 40 irregularities. Such statement of actual financial operations shall be in a form to be  
 41 specified and prescribed by the state auditor for the purpose of indicating the current  
 42 financial status of the schools or school system. Prior to publication, such form shall be  
 43 executed by the local board of education and signed by each member of said board and the  
 44 local school superintendent.

45 (d) A copy of the actual financial operations form required to be published by  
 46 subsection (c) of this Code section shall be mailed by each local board of education to the  
 47 Department of Education and the local county board of commissioners or local municipal  
 48 governing authority. A current copy of said form shall be maintained on file in the central  
 49 administrative office of the local school system for public inspection for a period of at least  
 50 two years from the date of its publication. Copies of the statement shall be made available  
 51 on request.

52 (e) A local board of education that fails to complete a corrective action plan or that  
 53 receives a report from the Department of Audits and Accounts pursuant to subsection (a)  
 54 of this Code section of findings of irregularities or budget deficits for the third consecutive  
 55 year shall be subject to withholding of funds pursuant to Code Section 20-2-243, at the  
 56 discretion of the State Board of Education."

57 **SECTION 2.**

58 Said article is further amended by revising Code Section 20-2-73, relating to suspension and  
 59 removal of local school board members upon potential loss of accreditation or where  
 60 one-half or more of schools in system are turnaround eligible schools, procedures, petition  
 61 for reinstatement, prohibition on use of public funds for litigation expenses, and  
 62 reimbursement of expenses, as follows:

63 "20-2-73.

64 (a)(1) Notwithstanding Code Section 20-2-54.1 or any other provisions of law to the  
65 contrary, if:

66 (A) A local school system or school is placed on the level of accreditation immediately  
67 preceding loss of accreditation for any reason or reasons by one or more accrediting  
68 agencies included in subparagraph (A) of paragraph (6) of Code Section 20-3-519, the  
69 local board of education shall notify the State Board of Education in writing within  
70 three business days of such placement and the State Board of Education shall conduct  
71 a hearing in not less than ten days of such notice nor more than 90 days and recommend  
72 to the Governor whether to suspend all eligible members of the local board of education  
73 with pay; ~~or~~

74 (B) One-half or more of the schools in a local school system are turnaround eligible  
75 schools, as defined in subsection (a) of Code Section 20-14-45, for the fifth or more  
76 consecutive year, the Department of Education shall notify the State Board of  
77 Education in writing within three business days of the publication of the list of  
78 turnaround eligible schools by the Office of Student Achievement and the State Board  
79 of Education shall conduct a hearing in not less than ten days of such notice nor more  
80 than 90 days and recommend to the Governor whether to suspend all eligible members  
81 of the local board of education with pay; provided, however, that this subparagraph  
82 shall be tolled for a local board of education while under a contract amendment or  
83 intervention contract pursuant to Code Section 20-14-45 so long as such local board of  
84 education is in substantial compliance with the terms of such contract amendment or  
85 intervention contract; or

86 (C) A local school system receives a report from the Department of Audits and  
87 Accounts pursuant to Code Section 20-2-67 of findings of irregularities or budget  
88 deficits for the third consecutive year, the State Board of Education shall conduct a  
89 hearing in not less than ten days nor more than 90 days of receipt of such report for  
90 such third consecutive year from the Department of Audits and Accounts pursuant to  
91 Code Section 20-2-67 and recommend to the Governor whether to suspend all eligible  
92 members of the local board of education with pay.

93 (2) A majority of the members of a local board of education may petition the State Board  
94 of Education to continue any hearing scheduled under this subsection. Upon a showing  
95 of good cause, the state board may in its sound discretion continue any such hearing.  
96 Notwithstanding any other provision of law, deliberations held by the State Board of  
97 Education pursuant to this subsection to formulate its recommendation to the Governor  
98 shall not be open to the public; provided, however, that testimony shall be taken in an  
99 open meeting and a vote on the recommendation shall be taken in an open meeting

100 following the hearing or at the next regularly scheduled meeting. If the State Board of  
 101 Education makes such recommendation, the Governor may, in his or her discretion,  
 102 suspend all eligible members of the local board of education with pay and, in consultation  
 103 with the State Board of Education, appoint temporary replacement members who shall  
 104 be otherwise qualified to serve as members of such board.

105 (b) Any local board of education member suspended under this Code section may petition  
 106 the Governor for reinstatement no earlier than 30 days following suspension and no later  
 107 than 60 days following suspension. In the event that a suspended member does not petition  
 108 for reinstatement within the allotted time period, his or her suspension shall be converted  
 109 into permanent removal, and the temporary replacement member shall become a permanent  
 110 member and serve out the remainder of the term of the removed member.

111 (c) Upon petition for reinstatement by a suspended local board of education member, the  
 112 Governor or his or her designated agent shall conduct a hearing for the purpose of receiving  
 113 evidence relative to whether the local board of education member's continued service on  
 114 the local board of education is more likely than not to improve the ability of the local  
 115 school system or school to retain or reattain its accreditation, ~~or~~ to improve the ratings of  
 116 the schools in the local school system so that less than one-half of the schools in such local  
 117 school system are on the turnaround eligible schools list in subsequent years, or to correct  
 118 and prevent audit irregularities or budget deficits in subsequent years. The appealing  
 119 member shall be given at least 30 days' notice prior to such hearing. Such hearing shall be  
 120 held not later than 90 days after the petition is filed and in accordance with Chapter 13 of  
 121 Title 50, the 'Georgia Administrative Procedure Act,' except that the individual conducting  
 122 the hearing shall have the power to call witnesses and request documents on his or her own  
 123 initiative. For purposes of said chapter and any hearing conducted pursuant to this Code  
 124 section, the Governor shall be considered the agency, and the Attorney General or his or  
 125 her designee shall represent the interests of the Governor in the hearing. If it is determined  
 126 that it is more likely than not that the local board of education member's continued service  
 127 on the local board of education improves the ability of the local school system or school  
 128 to retain or reattain its accreditation, ~~or~~ to improve the ratings of the schools in the local  
 129 school system so that less than one-half of the schools in such local school system are on  
 130 the turnaround eligible schools list in subsequent years, or to correct and prevent audit  
 131 irregularities or budget deficits in subsequent years the member shall be immediately  
 132 reinstated; otherwise, the member shall be permanently removed, and the temporary  
 133 replacement member shall become a permanent member and serve out the remainder of the  
 134 term of the removed member or until the next general election which is at least six months  
 135 after the member was permanently removed, whichever is sooner. Judicial review of any  
 136 such decision shall be in accordance with Chapter 13 of Title 50.

137 (d)(1) Subparagraph ~~(B)~~ of paragraph (1) of subsection (a) (a)(1)(B) of this Code section  
 138 shall apply to a local school system or school which is placed on the level of accreditation  
 139 immediately preceding loss of accreditation on or after April 20, 2011.

140 (2) Subparagraph ~~(B)~~ of paragraph (1) of subsection (a) (a)(1)(B) of this Code section  
 141 shall apply to a local school system which, on or after July 1, 2017, has one-half or more  
 142 of the schools in the local school system on the turnaround eligible schools list for the  
 143 fifth or more consecutive year.

144 (3) Subparagraph (a)(1)(C) of this Code section shall apply to a local school system  
 145 which, on or after July 1, 2018, receives a report from the Department of Audits and  
 146 Accounts pursuant to Code Section 20-2-67 of findings of irregularities or budget deficits  
 147 for the third consecutive year.

148 (e) For purposes of this Code section, an eligible member of a local board of education  
 149 shall mean a board member who:

150 (1) Was serving on the local board at the time the accrediting agency placed the local  
 151 school system or school on the level of accreditation immediately preceding loss of  
 152 accreditation; ~~or~~

153 (2) Was serving on the local board at the time the local school system had one-half or  
 154 more of the schools in the local school system on the turnaround eligible schools list for  
 155 the fifth or more consecutive year and had served on the local board for at least the  
 156 immediately preceding two years; or

157 (3) Was serving on the local board during the three years that the local board of  
 158 education received reports from the Department of Audits and Accounts pursuant to Code  
 159 Section 20-2-67 of findings of irregularities or budget deficits.

160 (f) A local board of education shall not expend any public funds for attorney's fees or  
 161 expenses of litigation relating to proceedings initiated pursuant to this Code section except  
 162 to the extent such fees and expenses are incurred prior to and through the recommendation  
 163 of the state board as provided for in subsection (a) of this Code section; provided, however,  
 164 that nothing in this subsection shall be construed to prohibit an insurance provider from  
 165 covering attorney's fees or expenses of litigation under an insurance policy.

166 (g) Any suspended board member who is reinstated by the Governor pursuant to this Code  
 167 section may be reimbursed by the local board of education for his or her reasonable  
 168 attorney's fees and related expenses incurred in pursuing such reinstatement."

169 **SECTION 3.**

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