

BRINGING HOPE TO NEW JERSEY UNDERGRADUATES: THE GEORGIA SCHOLARSHIP IN THE GARDEN STATE

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I. Introduction

Procuring an affordable college education continues to be a challenge for most American families.¹ As college and university tuition rates increase dramatically,² both the federal government and the states have scaled back their funding for student scholarships and school aid to address a myriad of budget concerns.³ With tuition becoming an ever-increasing portion of college revenue,⁴ the federal and state governments (and the schools themselves), have been forced to find innovative ways to increase the affordability of higher education for students.⁵

The federal government responded in 1996-97 by allocating over six billion dollars in grant money and thirty-two billion dollars in student loans through direct federal aid programs.⁶ In 1998, a new package of tax benefits for higher education, which include the HOPE (Helping Outstanding Pupils Educationally) and Lifetime Learning credits,⁷ became available for students and their families to further

¹ See generally GENERAL ACCT. OFF., HIGHER EDUCATION: TUITION INCREASING FASTER THAN HOUSEHOLD INCOME AND PUBLIC COLLEGES' COSTS (August 15, 1996). [hereinafter GAO College Costs Report].

² See *id.* (finding that between 1980 and 1995, average tuition at a 4-year public college for in-state Full Tuition Enrollments ("FTE"), increased 234%, as compared to a median household income increase of only 82%). See also Eric A. Lustig, *Taxation of Prepaid Tuition Plans and the 1997 Tax Provisions: Middle Class Panacea or Placebo? Continuing Problems and Variations on a Theme*, 31 Akron L. Rev. 229, 230 n.5 (1997).

³ See generally GAO College Costs Report, *supra* note 1. While the average Pell Grant awarded to FTE students increased by 72% from 1980-81 to 1994-95, college tuition rose three times as fast during the same period - from 16% to 23% of total revenue. See *id.* Chapter 2:2.3. Further, while higher education appropriations at the state level rose 96% during 1980-81 through 1993-94, these appropriations fell from 56% to 42% over the same period as a proportion of schools' revenues. See *id.* Chapter 2:2.2.

⁴ See GAO College Costs Report, *supra* note 1, Chapter 2:2.2. Figure 3.2 indicates that the three factors contributing most heavily to the tuition increases at higher education institutions are instruction, administration and research expenditures. See *id.*

⁵ See Lustig, *supra* note 2, at 231 and n.6.

⁶ See F. King Alexander, *The Decline and Fall of the Wall of Separation Between Church and State and Its Consequences for the Funding of Public and Private Institutions of Higher Education*, 10 U. Fla. J. L.&Pub. Pol'y 103, 122-23 (Fall 1998). Federal direct student aid programs allow the government to support higher education by providing aid to students themselves, rather than to the institutions that they attend. See *id.* at 122. Direct student aid programs are the primary vehicle for funding college education in the United States. See *id.* at 123.

⁷ See *infra*, Part IV.

defray the costs of higher education.⁸ The impact of these Federal programs has been somewhat limited, however, especially for middle and lower income families who were the intended beneficiaries of these policies.⁹ In fact, Lawrence Gladioux, director of policy analysis for the College Board in Washington, D.C. believes middle class families do not need tuition help as they are "going to invest in higher education anyway."¹⁰ Thus, the development of policies that will ease the burden of high tuition for the middle class has appropriately fallen to the states.¹¹

Regrettably, higher education has struggled to find a niche in state budgetary and political schemes.¹² Unlike primary and secondary education, higher education is not always constitutionally mandated and certainly does not enjoy the strong fiscal support traditionally given to elementary and high schools.¹³ Further, the scarcity of state budget dollars acts as a constraint on high-cost items like higher education, keeping them low on, or sometimes completely off, the policy agenda.¹⁴ Finally, even if a particular state *does* allocate significant monies to higher education, much of the dollars go toward the day-to-day

⁸ See INTERNAL REVENUE SERVICE, PUBLICATION 97, TAX BENEFITS FOR HIGHER EDUCATION, 3 (1998).

⁹ See Alexander, *supra* note 6, at 125, 126. Public universities, which enroll primarily lower-middle income students, received an average federal grant award that was 39% lower than that awarded to students at private institutions, which tend to enroll higher-income students. See *id.*

¹⁰ See Alan Guenther, *Students, Kin, Lawmaker Press for More Aid at Rutgers*, ASBURY PARK PRESS, October 24, 1999, at 17. Programs like Helping Outstanding Pupils Educationally ("HOPE"), that are aimed at the middle class, constitute pandering to these voters who can find a way to pay for college without state help. See *id.*

¹¹ See Margaret E. Goertz, *State Education Policy in the 1990's*, in THE STATE OF THE STATES 179, 179 and n. 1 (Carl E. Van Horn, ed., 3rd ed. 1996) (asserting that public higher education, like elementary and secondary education, is the primary responsibility of the states).

¹² See *infra* Part II.

¹³ See, e.g., NEW JERSEY BUDGET IN BRIEF FOR FISCAL YEAR 1999-2000, at 3. Governor Whitman's Budget recommendations for FY 2000 reserve 31.73% of the total recommendations for primary and secondary education and only 6.6% for higher education. See *id.* at 8.

¹⁴ See JOHN W. KINGDON, AGENDAS, ALTERNATIVES AND PUBLIC POLICIES 105 (2nd ed. 1995). Budgetary politics are at the very center of government activity. See *id.* In fact, most politician's careers are inextricably linked to the budgetary success of their prized programs. See *id.* For example, the rising costs of health care paralyzed that industry during the 1990's, leaving policymakers unwilling to take any action for fear of upsetting the system. See *id.* at 105-106.

operation of the institutions rather than to direct student aid.¹⁵

Despite these budgetary constraints, state politicians have managed to find innovative ways to improve education and access to it.¹⁶ In 1993, Governor Zell Miller of Georgia answered this call by putting forth the HOPE Scholarship program, the first of its kind in the nation.¹⁷ The popular support generated by this program has led to its planned institution in a number of states,¹⁸ and to its manifestation at the federal level in the form of the HOPE tax credit.¹⁹ During the 1999 legislative session, HOPE made its way to the New Jersey statehouse, but its implementation in the Garden State has been stalled by a recent bill calling for a study commission on the scholarship.²⁰ Thus, only time (and a study commission) will tell if HOPE will someday come to New Jersey.

This note will analyze the development of the HOPE Scholarship and evaluate its feasibility in New Jersey. Part II provides a detailed background of the obstacles facing higher education legislation in New Jersey.²¹ Part III then discusses the HOPE scholarship in its original Georgia form and evaluates its success over the past seven years.²² Part IV deals with the expansion of HOPE beyond the Georgia boundaries,

¹⁵ See, e.g., NEW JERSEY BUDGET IN BRIEF FOR FISCAL YEAR 1999-2000, at 105. Governor Whitman recommended \$1,603,213 (in thousands) for higher education yet only \$201,307 (in thousands) is earmarked for student assistance programs. See *id.* This represents only 12% of the total higher education allocations, yet it keeps New Jersey near the top of the nationwide rankings for grants to students. See *id.*

¹⁶ See Daniel Pedersen and Pat Wingert, *Some HOPE for College - Can Georgia's Scholarships Go Nationwide?* NEWSWEEK, February 3, 1997, at 44. Although higher education is the focus of this article, funding programs for other stages of education have also become prevalent. See *id.* For example, in addition to the HOPE Scholarship, Georgia governor Zell Miller also instituted guaranteed preschool, charter schools and a program which allows high school students to take courses for college credit. See *id.*

¹⁷ See *infra* Part III. The HOPE Scholarship allows students with a B average or better to attend in-state public institutions free of charge and provides a yearly scholarship of \$3,000 for students electing to attend an in-state private school. See *id.* Since its inception, HOPE has benefited 480,746 students at a cost of \$923, 256, 670 - paid for through the state lottery fund. See *HOPE Scholarship Program - Program Totals*, September 1, 1993 - February 19, 2000 (visited February 22, 2000) <http://www.hope.gsfc.org/gsf/html_summary_grant_all_cov_H.htm>.

¹⁸ See Peter Beinart, *The Carville Trick*, TIME, November 16, 1998, at 58. See also *infra* Part IV.

¹⁹ See *infra* Part IV.

²⁰ See *infra* Part V.

²¹ See *infra* Part II.

²² See *infra* Part III.

particularly into the federal realm.²³ Part V addresses the recent effort to bring HOPE to New Jersey.²⁴ Finally, Part VI analyzes the propriety of establishing the scholarship in New Jersey, paying specific attention to the critiques that have followed the scholarship as its virtues are extolled across the country.²⁵

II. Systemic Barriers to Higher Education Funding in New Jersey

A. Dispelling Myths

"Education has always been a top priority for our country, but now it truly must be a top priority."²⁶

Many states have taken this quote to heart in recent years, significantly increasing direct student grant dollars as a percentage of state higher education expenses.²⁷ New Jersey has been no exception; both overall higher education expenditures²⁸ and grants have been bolstered by greater state funding.²⁹ However, these statistics are somewhat illusory; while higher education funding in dollars increased

²³ See *infra* Part IV.

²⁴ See *infra* Part V.

²⁵ See *infra* Part VI.

²⁶ See Lustig, *supra* note 2, at 229, citing *Tax Incentives for Higher Education: Hearings Before the Senate Comm. on Finance*, 100th Cong. 1 (1988) (statement of committee chair Lloyd Bentsen).

²⁷ See Alexander, *supra* note 6, at 123 (finding that in 1996-97, Grant programs in New York and Vermont constituted 22% of higher education allocations). Illinois and Pennsylvania similarly increased their expenditures to 14% of higher education spending. See *id.* The national average at the time was 6.6%. See *id.*

²⁸ See NEW JERSEY BUDGET FISCAL YEAR 1996-1997, at B-15 to B-22. Higher education expenses in general increased steadily from \$1,066,294 in 1995 to \$1,117,387 in 1996 and settled at a recommended \$1,151,242 for that fiscal year (dollar amounts are in thousands). See *id.* The steady increase continued in Fiscal Year 2000, where the Governor's recommendation totaled \$1,273,338 (in thousands). See NEW JERSEY BUDGET IN BRIEF FOR FISCAL YEAR 1999-2000, at 8.

²⁹ See NEW JERSEY COMMISSION ON HIGHER EDUCATION, FOURTH ANNUAL SYSTEMWIDE ACCOUNTABILITY REPORT, JANUARY 2000, at Table 20 (visited February 3, 2000) <<http://www.state.nj.us/highereducation>> (hereinafter Systemwide Accountability Report). In FY 1999, New Jersey awarded (in thousands of dollars) \$140,949 in Tuition Aid Grants (its most extensive grant program) and allocated \$5,827 to the Outstanding Scholars Recruitment Program, designed to keep New Jersey's best students at in-state institutions. See *id.* The Governor's recommendations for FY 2000 include increases of \$7.8 million and \$3.2 million for TAG and OSRP respectively. See NEW JERSEY BUDGET IN BRIEF FOR FISCAL YEAR 1999-2000, at 107.

23% from 1989-1999, the "gain" is actually a 14% decrease in total funding when the 10-year rate of inflation is applied.³⁰ Invariably, this has led to tuition increases, given the institutions' high dependence on tuition revenue.³¹

New Jersey's public college system charges the second-highest tuition, fees and room and board in the nation.³² To combat these costs, New Jersey has established a generous financial aid program.³³ However, a recent study conducted by the state Commission on Higher Education found that, despite this generosity, students in all sectors of higher education in New Jersey depend more heavily on loans than state or federal grants.³⁴ Even though the loan indebtedness of New Jersey students rose to \$580 million in 1998, government and collegiate officials have "little motivation" to provide alternate relief, since parents have been willing to pay the price anyway.³⁵

³⁰ See Alan Guenther, *State's College Spending Lagging Badly*, ASBURY PARK PRESS, April 18, 1999, at 17. Further, of the \$550 million supposedly earmarked for college capital maintenance, only \$366 million actually will come from the state; the rest is to be matching funds put up by the institutions themselves. See *id.*

³¹ See *id.* See also Systemwide Accountability Report, *supra* note 29, at Table 19d (indicating that New Jersey's 4-year public nondoctoral institutions derive 37.2% of their revenue from tuition and fees). That percentage is substantially higher in community colleges: 43.3%. See *id.* Table 19e.

³² See Alan Guenther, *College Costs Keep Escalating*, ASBURY PARK PRESS, April 20, 1999, at 1. The 1999 Tuition at a New Jersey public college averaged \$9,668 per year, second only to Vermont. See *id.* In fact, 1998 tuition and fees alone at Rutgers cost 11.5% of the income for a family earning \$50,000. See Alan Guenther, *College Costs a Hard-to-Bear Burden*, ASBURY PARK PRESS, November 8, 1998 at 23.

³³ See Systemwide Accountability Report, *supra* note 29, Executive Summary (reporting that New Jersey ranks first in the percentage of students receiving need-based aid and second in need-based dollars per student).

³⁴ See Systemwide Accountability Report, *supra* note 29, at Section D3. Three-fifths of the students at the median independent institution take out loans, while one-half of the students at the median senior public institution relied on loans. See *id.* Further, more students at the median senior public institution participate in loan programs than in state or federal grant programs. See *id.* The data is similar at the median independent institution, where only institutional grants outpace loans. See *id.* A student graduating Rutgers, New Jersey's largest public institution, does so with an average debt of \$15,600. See Guenther, *supra* note 10, at 17. This situation has occurred because over 90% of the money earmarked by the state for financial aid goes to those with incomes below \$40,000. See Guenther, *supra* note 30, at 17. Even this staggering amount is insufficient to cover all college costs for these students. See Alan Guenther, *Tuition-free New Jersey Finds Support in Georgia*, ASBURY PARK PRESS, November 11, 1998 at 8. As a result, the one million middle class families who earn between \$40,000 and \$100,000 are left with few options to send their children to college. See Guenther, *supra* note 32, at 1.

³⁵ See Alan Guenther, *Families Sacrificing to Pay "Love Ransom,"* ASBURY PARK PRESS, June 6, 1999, at 19. The "love ransom" is "the money parents will pay to show their

The aid programs unrelated to income also offer little help.³⁶ Further, merit-based scholarships, like the Outstanding Scholars Recruitment Program only reach a small percentage of students.³⁷ As a result, 60% of New Jersey college students worked up to 20 hours per week in 1998, in order to afford to stay in school.³⁸ Thus, unless a student is low-income or at the very top of his or her class, they have few, if any, options for real tuition cost reduction in a state which has one of the most generous financial aid systems in the nation.³⁹

B. Systemic Barriers to Funding

A number of circumstances in New Jersey have served to keep higher education funding at low levels relative to other state programs, despite the enduring rhetoric about its importance for the future of the state and the country.⁴⁰ These factors include: (1) the lack of a constitutional requirement for higher education; (2) the politics of budgets; (3) the educational "home rule" attitude; and (4) the lack of a cohesive student voting population and interest group system.⁴¹

First among these factors is that in New Jersey, neither a right to higher education nor state financial support for students or higher education institutions are constitutionally required.⁴² The State

children they love them enough to mortgage their home so the kids can attend the college of their choice." *Id.* A Kean University vice-president characterized high tuition costs as personal investments for students. *See id.* Like businesses, as students borrow, they expand their potential. *See id.*

³⁶ *See* Alan Guenther, SURVEY SHOWS PARENTS FEAR RISING COLLEGE COSTS, ASBURY PARK PRESS, August 4, 1999 at 1. For example, in 1999, 82% of New Jersey parents had never heard of N.J.BEST, the state's only discounted college savings plan. *See id.* Even those who knew of the program found that, at best, it offered middle class families "the chance to save money they don't have." *See* Guenther, *supra* note 32, at 1.

³⁷ *See* Guenther, *supra* note 39. OSRP scholarships are granted only to students who are ranked in the top 15% of their class and score 1350 on their SAT. *See id.*

³⁸ *See* Alan Guenther, *The High Cost of Higher Education*, ASBURY PARK PRESS, November 9, 1998 at 1. One Rutgers student, who pays for tuition himself, found it difficult "trying to pay for school when you've got to take care of other bills as well, like car insurance." *Id.* Further, the vice-principal of Sterling Regional High School estimated that 70% of the students at his school go to work every day, "just to have something to wear." *Id.* Even so, Rutgers University officials contend that their students consider the school's tuition a bargain. *See id.*

³⁹ *See supra* notes 34-38 and accompanying text.

⁴⁰ *See infra* notes 41-61 and accompanying text.

⁴¹ *See infra* notes 42-61.

⁴² *See* N.J. CONST. (1947) Art. VIII, §4, para. 1. The State Constitution provides that:

Supreme Court cases *Robinson v. Cahill*⁴³ and *Abbott v. Burke*⁴⁴ have caused legislators to focus heavily on the programmatic and budgetary concerns of primary and secondary education to the exclusion of higher education, an admittedly difficult task.⁴⁵

Second, budgetary politics and necessities also restrict the funds available for higher education.⁴⁶ Since budget shortfalls generally bring

"The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this State between the ages of five and eighteen years." *Id.*

⁴³ See 62 N.J. 473 (1973) (subsequent history omitted) (*Robinson I*). The Court explained that the constitutional guarantee of a thorough and efficient education requires "equal educational opportunity" for all children, and if any school district could not sufficiently provide this opportunity, then the State must ensure its delivery. See *id.* at 513, 519-20. Note that the opinion in *Robinson I* focused on the financial aspects of the public school funding scheme. See *id.* at 515-16. After years of debate between the courts and the legislature, which included a Court threat to close down the public school system (see *Robinson VI*), the legislature finally adopted a statute to provide full funding to the schools.

⁴⁴ See 100 N.J. 269 (1985) (subsequent history omitted) (*Abbott I*). The Abbott plaintiffs' challenge was against the program established in the state for the allocation of education dollars. See *id.* at 273. Initially, the Court remanded the case to the administrative courts to devise and approve an adequate funding scheme. See *id.* That plan was challenged and defeated in *Abbott II*. See *Abbott v. Burke*, 119 NJ 287 (1990) (*Abbott II*). New plans were designed and successfully challenged in the courts two more times by the Abbott plaintiffs. See *Abbott v. Burke*, 136 NJ 444 (*Abbott III*) (finding the Quality in Education Act proposed by Governor Florio in response to the *Abbott II* ruling unconstitutional); *Abbott v. Burke*, 149 NJ 145, (1996) (*Abbott IV*) (striking down the CEIFA program promulgated by the Department of Education as unconstitutional). The state finally devised a "whole school reform" program palatable to the courts in *Abbott v. Burke*, 153 N.J. 480, 527 (1998) (*Abbott V*). In *Abbott v. Burke*, _ NJ _ (2000) (*Abbott VI*), the Court gave its final pronouncement to date on school funding, confirming that its ruling in *Abbott V* was intended to place the burden for *all* school funding, including capital construction, on the state.

⁴⁵ See *Robinson v. Cahill*, 69 N.J. 449, 457 (1976) (per curiam) (later history omitted) (*Robinson II*). The difficulties facing legislators in devising adequate educational schemes are reflected in the statement made by the Legislature in enacting the 1975 Public School Education Act: "the sufficiency of education is a growing and evolving concept. . . [and] depend[s] upon the economic, historical, social and cultural context in which that education is delivered." *Id.*, citing N.J.S.A. 18A:7A-2a(4). The *Robinson II* court goes on to state that this "perspective recognition * * * manifests an awareness that what seems sufficient today may be proved inadequate tomorrow, and even more importantly that only in the light of experience can one ever come to know whether a particular program is achieving the desired end." *Id.* at 457-58.

⁴⁶ See generally Kingdon, *supra* note 14. In the larger context of the state itself, education funding competes with other policy areas like public welfare, corrections and hospitals for state dollars. See Henry J. Raimondo, *State Budgeting: Problems, Choices and Money*, in THE STATE OF THE STATES 33, 33 and Fig. 3.1 (Carl E. Van Horn, ed., 3rd ed. 1996). In light of this, legislators are left to balance the political strengths of taxpayers with those of parents of school students in devising school funding schemes, avoiding divisive policy options unless a majority of their constituents are to benefit from them. See Michael

inexpensive programs to the forefront,⁴⁷ higher education had little chance of gaining ground, absent a budget surplus, due to its high cost and complexity of problems.⁴⁸

Third, Legislators' choices to subordinate higher education are made easier by the fact that New Jersey is an educational "home rule" state.⁴⁹ The proliferation of parents acting to maximize education funding for their children at little cost has created an environment where education is seen as a public good. However this very system ensures that the local resources which support it are not dissipated by reallocation to other public schools, or to higher education institutions.⁵⁰ This home rule system acts in concert with two other New Jersey phenomena: the outmigration of high school students⁵¹ and

Mentrom, *Why Efforts to Equalize School Funding Have Failed: Towards a Positive Theory*, in POLITICAL RESEARCH QUARTERLY 846, 849 (December 1993). This has become less of a concern in recent years, primarily due to the strong economy. See Kingdon, *supra* note 14 at 108. New Jersey currently enjoys a surplus in many state funds. See NEW JERSEY BUDGET IN BRIEF FOR FISCAL YEAR 1999-2000 at 8 (estimating that the Fund will maintain its July 1, 1999 balance of \$19, 910,638 (in thousands) in June 30 2000). However, previous fiscal constraints made state legislators' decisions regarding the prominence of higher education on the agenda tougher. See generally, Kingdon, *supra* note 14 at 106.

⁴⁷ See *id.* at 107.

⁴⁸ See generally GAO College Costs Report, *supra* note 1.

⁴⁹ See BARBARA G. SALMORE AND STEPHEN A. SALMORE, NEW JERSEY POLITICS AND GOVERNMENT: SUBURBAN POLITICS COMES OF AGE 259 (1993). See also Goertz, *supra* note 11, at 179 (describing education as a "state authority locally administered"). Local leaders and parents jealously guard their centralized control over education policy and funding in their respective districts and strenuously resist any state efforts to constrain this control. See generally *id.*, Chapter 15. The history of educational politics in New Jersey, from the 1920's to the Florio Quality Education Act of the 1990's, is marked by a constant tug-of-war over local school policy between the state (through the legislature and the courts) and home-rule school boards and parents. See *id.*

⁵⁰ See Mentrom, *supra* note 46, at 850. See also John Shure, *Soapbox: Our Schools*, THE NEW YORK TIMES, June 1, 1997:

There has never been a candidate for Governor of New Jersey who made school finance reform a campaign centerpiece, or even mentioned it unless pressured to. People say things in campaigns designed to attract wide support. If there were a way to deal with school funding that had the sort of public appeal that makes a good campaign issue, the problem would have been solved a long time ago. The problem is that it's hard, it costs a lot of money and what works for some people in some places doesn't work for others – or at least they don't perceive that it works because this is an issue that can really be solved only if people came around to the view that we all have to contribute to educate New Jersey's children.

Id. If this is the state of affairs at the grade- and high school level, one cannot be surprised that higher education funding faces similar, if not greater challenges with voters and legislators.

⁵¹ See SALMORE AND SALMORE, *supra* note 49 at 261 (describing New Jersey as the

the inaccessibility of higher education to middle and lower income students⁵² to make parents less concerned about higher education funding in-state.

Compounding this problem is the final factor: the students who *do* populate in-state institutions either cannot, or fail to make their voices heard to local legislators.⁵³ This occurs for a number of reasons. First, the student voter pool is diluted by the fact that some students are from other states⁵⁴ or fail to register to vote.⁵⁵ In addition, the fragmentation of the education interest groups in New Jersey prevents these groups from effectively advocating for increased student aid on a statewide

"Cowbird State," after a creature who places its young in others' nests). Outmigration of high school students has long been a problem in New Jersey; historically, over half of New Jersey high school graduates choose to attend college elsewhere. *See id.* A recent study undertaken by the state Commission on Higher Education confirms that this remains the case. *See* New Jersey Commission on Higher Education, *Recommendations on the Capacity of New Jersey's Higher Education System 1997-1998*, at Exhibit 2-5 (visited February 3, 2000) <<http://www.state.nj.us/highereducation>> (finding that of a possible 51,000 high school graduates intending to go to college, about 25,000 chose to go to out-of-state schools). This number includes nearly 3/4 of New Jersey's highest achieving students. *See State's Brightest Going Elsewhere at College Time*, THE COURIER NEWS, December 8, 1997, at 4.

Outmigration occurs in part due to the high costs of education in New Jersey. *See* GAO College Costs Report, *supra* note 1, at Table 4.1 (finding that New Jersey students had an average college tuition cost of \$3,848 at the time, as compared to the national average of \$2,865). The higher incomes of many New Jersey residents, which allow them to send their children to more expensive out-of-state schools also contribute to this problem. *See State's Brightest Going Elsewhere at College Time*, THE COURIER NEWS, December 8, 1997, at 4. Finally, the failure to identify student retention as a major priority of the system perpetuates outmigration. *See id.* *But see* Systemwide Accountability Report, *supra* note 29, at Table 20 (describing the Outstanding Scholars Recruitment Program, which is designed to keep New Jersey's best students at in-state institutions). The Governor remains committed to this three-year old program, as indicated by a \$3.2 million recommended increase in OSRP for FY 2000. *See* NEW JERSEY BUDGET IN BRIEF FOR FISCAL YEAR 1999-2000, at 107.

⁵² *See supra* note 38.

⁵³ *See Voter Registration and Turnout in Federal Elections (by Age 1972-1996)* (visited February 25, 2000), <<http://www.fec.gov/pages/agedemog/html>>. According to data from the last Federal election, slightly over 30% of citizens aged 18-24 actually voted. *See id.* Their voices constituted a paltry 7.62% of the total U.S. vote. *See id.* Fifty-four percent of New Jersey's students fall in this age bracket. *See* New Jersey Commission on Higher Education, *New Jersey's Higher Education System at a Glance* (visited March 3, 2000) <<http://www.state.nj.us/highereducation/sysglanc>>.

⁵⁴ *See Fourth Annual Systemwide Accountability Report - New Jersey Commission on Higher Education*, January 2000. Table 4 indicates that in 1998, 7.8% of students attending New Jersey institutions were from out-of-state. *See id.* at Table 4.

⁵⁵ *See supra* note 53, (finding that only 48.4% of the Voting Age Population 18-24 actually registered to vote).

level.⁵⁶ Finally, the importance of these education interests in shaping policy has steadily decreased since the 1980's,⁵⁷ allowing the entry of "politically safer" non-education interests, such as business, into the education policy arena.⁵⁸ Instead of increasing funding, these groups prefer to focus on the institutions' abilities to prepare students for the world beyond college⁵⁹ and how well the colleges use the dollars that they have already been given.⁶⁰ The factors described in this section, coupled with the aid system problems discussed in the preceding section, create in New Jersey the environment illustrated in the quote above: student aid is touted as a high priority with little actually done to support the rhetoric.⁶¹

III. The Georgia HOPE Scholarship

The environment and attitude toward higher education in Georgia is decidedly different than the situation in New Jersey.⁶² In fact,

⁵⁶ See Goertz, *supra* note 11, at 187. Note that Ms. Goertz' article focuses on the fragmentation of the primary and secondary education political environment. See *id.* at n. 1. The division of the state higher education system into state universities, county colleges and private institutions has led to the creation of specialized interest groups which are often in conflict with each other. See JEFFREY M. BERRY, THE INTEREST GROUP SOCIETY 197 (1997).

⁵⁷ See SALMORE AND SALMORE, *supra* note 49 at 268, (describing then-governor Kean's exclusion of the NJEA from the drafting of his "Blueprint for Educational Reform"). See also Goertz, *supra* note 10, at 186 (finding that state education interest groups were relatively unimportant in the sweeping reforms of the 1980's and were still struggling to regain their prominence in the 1990's).

⁵⁸ See Goertz, *supra* note 11 at 185. These interests tend to prefer results-oriented reforms in higher education, which conspicuously exclude direct grant monies. See *id.* at 191. Interestingly, these groups have used limits on tuition increases and the speeding of the academic process by shortening degree requirements and providing college credit through acceleration programs. See GAO College Costs Report, *supra* note 1, Ch.5 (listing the actions taken by states and schools to combat the college tuition rise). The groups also devise schemes by which they can help students to pay for costs, but none of these schemes include tuition reduction. See *id.* Most involve tuition prepayment programs, spreading costs over longer periods of time and special college savings plans. See *id.*

⁵⁹ See Goertz, *supra* note 11, at 186.

⁶⁰ See Kenneth H. Ashworth, *Performance-Based Funding in Higher Education: The Texas Case Study*, in CHANGE 8, 10 (November/December 1994).

⁶¹ See notes 26-60 and accompanying text. See also Alan Guenther, *Tax For Tuition-Free College Supported*, ASBURY PARK PRESS, January 10, 1998, at 23 (finding that 52% of citizens polled said that the state pays too little attention to higher education).

⁶² See Alan Guenther, *Tuition-free New Jersey Finds Support in Georgia*, ASBURY PARK PRESS, November 11, 1998, at 9. While the Northeastern states remain focused on private education, the South has a strong tradition for supporting public education at both the elementary and college levels. See *id.* (quoting George Benson, current dean of the

Georgia's Constitution progressively recognizes that education past the secondary level is included under the umbrella of "adequate public education" that the state is obligated to provide.⁶³ Georgia boasts a public higher education system consisting of 67 institutions (almost half of which are technical schools) and a private system consisting of 35 institutions.⁶⁴

The establishment of the HOPE Scholarship in 1993 and its subsequent development has substantially increased the accessibility of higher education to Georgia students.⁶⁵ The number of students who remain in-state for their college education has also increased.⁶⁶ In addition, the scholarship has greatly improved the academic performance of students and has increased the expectation of parents and students alike of attending college.⁶⁷ Currently, 54% of Georgia

University of Georgia business school and former Dean at Rutgers University in New Jersey).

⁶³ *Ga. Const.* Art. VIII, §I, Para. I (1999) ("The provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia. Public education for the citizens prior to the college or postsecondary level shall be free and shall be provided for by taxation. The expense of other public education shall be provided for in such manner and in such amount as may be provided by law"). *Cf. N.J. Const.* (1947) Art. VIII, §4, para. 1 (only requires a public education system for children up to the age of eighteen).

⁶⁴ *See 54 Percent of Georgia Higher Education Students Receive HOPE*. Georgia Student Finance Commission Press Release of October 6, 1999 (visited February 25, 2000) <http://www.hope.gsfc.org/press_release/pr_10-06-1999> (*Cf. New Jersey Commission on Higher Education, New Jersey's Higher Education System at a Glance* (visited March 3, 2000), <<http://www.state.nj.us/highereducation/sysglanc>> (indicating that New Jersey has 31 public institutions in total, as opposed to 25 independent institutions). This system supported 267,293 Georgia resident students in 1999. *See id.* With the state's outmigration rate a paltry 24%, it will continue to be the primary means of higher education for most of Georgia's students. *See HOPE Helping to Limit "Brain Drain" in Georgia*, *The Citizen Online Weekend*, Wednesday, December 30, 1998 (visited February 25, 2000) <<http://www.thecitizennews.com/main/archive-981230/weekend/w-03.html>>.

⁶⁵ *See infra* Part III.

⁶⁶ *See Daniel T. Bugler, Gary T. Henry and Ross Rubenstein, An Evaluation of Georgia's HOPE Scholarship Program: Effects of HOPE on Grade Inflation, Academic Performance and College Enrollment 2*, November 19, 1999, available at http://arcweb.gsu.edu/csp/csp_other.htm#hope (hereinafter, 1999 Report).

⁶⁷ *See Council Finds HOPE Does Not Cause Grade Inflation*, Georgia Council For School Performance Press Release, Wednesday November 17, 1999 (visited February 25, 2000) <http://arcweb.gsu.edu/csp/csp_hopenews.html>. Since its inception in 1993, 434,879 students have earned some type of HOPE Scholarship, with approximately \$934 million in lottery funds expended to support the program. *See HOPE Fact Sheet - Disbursement of Georgia's HOPE Scholarships to Georgia's Educational Institutions* (visited March 1, 2000) <http://www.hope.gsfc.org/press_release/hopefaq.cfm>. A recent study indicated that, since the inception of HOPE, more students are entering college with

students who remain in-state for higher education receive HOPE Scholarships.⁶⁸ Significantly, this increase in HOPE eligibility is not due to grade inflation or students' avoidance of rigorous classes.⁶⁹

A. Legislative History

The concept of using lottery funds to support education in the South was first promoted as a campaign tenet by political consultant James Carville.⁷⁰ Using gambling as a revenue source was a difficult sell in the South, especially in Georgia, where the Christian Right strenuously opposed gambling.⁷¹ However, the serious under-funding of public schools in the South coupled with the strong anti-tax sentiments in the region made the once-taboo lottery program more appealing to voters.⁷² During his campaign for the Georgia governorship, Zell Miller allayed concerns that lottery dollars would simply dissipate into other areas of government expenditure by promising to specifically earmark the lottery funds for educational purposes.⁷³ "The Carville Trick" worked in Georgia; Zell Miller was inaugurated as the state's 79th governor in January, 1991.⁷⁴

college prep diplomas and need less remedial coursework in college. See 1999 Report, *supra* note 66 at 1.

⁶⁸ See *54 Percent of Georgia Higher Education Students Receive HOPE*. Georgia Student Finance Commission Press Release of October 6, 1999 (visited February 25, 2000) <http://www.hope.gsfc.org/press_release/pr_10-06-1999>. The number of HOPE enrollees in Georgia institutions has risen from 46.8% in 1993 to 81.4% in 1998. See 1990 Report, *supra* note 66 at 1.

⁶⁹ See 1990 Report, *supra* note 66 at 1.

⁷⁰ See Peter Beinart, *The Carville Trick*, TIME, November 16, 1998, at 58. The idea won then-unknown Wallace Wilkinson the governorship of Kentucky. See *id.* Riding the success of that victory, Carville made the idea the centerpiece of Zell Miller's gubernatorial campaign in Georgia. See *id.*

⁷¹ See *id.* Georgia did not have a lottery at all until HOPE was proposed, a thought quite foreign to those in Northeastern states. In fact, the Georgia Constitution needed to be amended by referendum to allow for the lottery. See *HOPE Fact Sheet - The Creation of HOPE* (visited March 1, 2000) <http://www.hope.gsfc.org/press_release/hopefaq.cfm>.

⁷² See *id.*

⁷³ See *id.*

⁷⁴ See *id.* See also *HOPE Fact Sheet - The Creation of HOPE* (visited March 1, 2000) <http://www.hope.gsfc.org/press_release/hopefaq.cfm> Miller would ride the HOPE scholarship to a second term in 1994 and would leave the governor's office in 1998 with an 80% approval rating, due largely to the scholarship. See *id.*

A mere two weeks after his inauguration, Governor Miller introduced a resolution for a lottery referendum before the state legislature, which was adopted with little dissent.⁷⁵ The amendment to allow for the creation of a lottery was put to the voters almost two years later and passed by a margin of more than 95,000 votes.⁷⁶ Once that system was running, Governor Miller immediately set forth three distinct programs which were to be the beneficiaries of the newly-created lottery, one of which was the HOPE Scholarship program.⁷⁷

Georgia's HOPE Scholarship has undergone a number of changes since its inception.⁷⁸ The original HOPE proposal covered only the first two years of tuition and eligibility was capped at family incomes below \$100,000.⁷⁹ In 1995, the HOPE was extended to some non-traditional students, and gave students performing below the required academic standards the ability to earn back the scholarship.⁸⁰ In 1996, academic and monetary changes were brought to the private college component of HOPE.⁸¹ Also in 1996, HOPE underwent its first standards revision, clarifying which courses would be counted toward the calculation of the HOPE GPA.⁸² 1997 brought two more HOPE eligibility extensions:

⁷⁵ See *HOPE Fact Sheet - The Creation of HOPE* (visited March 1, 2000) <http://www.hope.gsfc.org/press_release/hopefaq.cfm>

⁷⁶ See *id.* In 1993, the inaugural year of the Georgia lottery, \$360 million was raised for the betterment of education in Georgia. See *id.* The total amount raised by the lottery during 1993 was 1.13 billion, a national record. See *id.* The Georgia State Lottery, specifically earmarked for education, is codified at O.C.G.A. §50-27-1 (1999). See O.C.G.A. §50-27-1 (1999).

⁷⁷ See *id.* The other two projects created were "a voluntary pre-kindergarten program for 4-year-olds and an instructional technology program." *Id.* The first HOPE scholarship was awarded in September 1993, a scant two months after the first ticket was sold. See *id.*

⁷⁸ See *infra* notes 77-82.

⁷⁹ See *HOPE Fact Sheet - Major Milestones in HOPE History* (visited March 1, 2000), <http://www.hope.gsfc.org/press_release/hopefaq.cfm>. These restrictions were eliminated on July 1, 1994 and July 1, 1995 respectively. See *id.* Similar restrictions exist today on the Federal Hope Tax Credit, described in Part IV, *infra*.

⁸⁰ See *id.* Originally if students failed to maintain a B average after their freshman year, they would lose their scholarship. See *id.* The new regulations enabled students to earn the scholarship back for their junior year if they completed their sophomore year with a B average. See *id.* Non-traditional students were eligible for HOPE only after their junior year in college, provided a B average was maintained. See *id.*

⁸¹ See *id.* For the first time, private college students were required to earn and maintain a B average to keep their scholarships; however, their scholarship award was raised to \$3,000. See *id.*

⁸² See *id.* High school students, beginning with the Class of 2000, needed to maintain a B average in core curriculum classes of English, math, social studies, foreign language and science to earn the scholarship. See *id.*

broader coverage for non-traditional students and eligibility for home-schooled students.⁸³ These revisions were consolidated in 1998, as the HOPE scholarship was given its own part in the Georgia Code.⁸⁴

HOPE reached immortality in 1998 as voters passed a constitutional amendment protecting HOPE from political or legislative tampering.⁸⁵ HOPE also garnered its first national recognition during that year when Georgia was ranked first among the fifty states in academic-based student financial aid, a position that the state maintained in 1999.⁸⁶ HOPE remains strong in Georgia: in his 1999 inaugural address, governor Roy E. Barnes pledged that the promise of HOPE will expand to meet the needs of students at all levels of education.⁸⁷

B. Program Description

In order to be eligible for a HOPE scholarship, a student must be a United States citizen and neither in default of Federal Title IV loans nor a convicted drug felon.⁸⁸ HOPE also sets forth universal academic eligibility requirements, referred to as the college preparatory program.⁸⁹ As of this year, HOPE requires students to take a specified

⁸³ See *id.* Non-traditional students would now have all four years of college covered. See *id.* Home-schooled students would be eligible for HOPE retroactively if they completed their first college year with a B average. See *id.*

⁸⁴ See O.C.G.A. §20-3-519 (1999).

⁸⁵ See *HOPE Fact Sheet - Major Milestones in HOPE History* (visited March 1, 2000) <http://www.hope.gsfc.org/press_release/hopefaq.cfm>. The amendment was approved on November 3, 1998. See *id.*

⁸⁶ See *id.* (citing the rankings established by the National Association of State Student Grant Aid Programs).

⁸⁷ See *HOPE Fact Sheet* (visited March 1, 2000) <http://www.hope.gsfc.org/press_release/hopefaq.cfm> (citing Governor Barnes' January 11, 1999 Inaugural Address). Last term, the removal of the "Pell Offset" was proposed. See *Two Major Changes Proposed for HOPE* Georgia Student Finance Commission Press Advisory, January 19, 2000 (visited February 25, 2000) <http://www.hope.gsfc.org/press_release/pr_01-19-2000.htm>. The "Pell Offset" refers to the fact that Georgia students who receive Pell grants receive only the book allowances if they are eligible for HOPE. See *id.* The governor's plan would strike this language from O.C.G.A. §20-3-519.10 (1999) and would affect almost 20,000 students. See *id.* The Pell grant money could then be used exclusively to offset room and board. See *id.* The governor has also proposed an expansion of a student's ability to regain HOPE throughout their college career should they fall out of eligibility. See *id.*

⁸⁸ See O.C.G.A. §20-3-519.1 (1999).

⁸⁹ See *The HOPE Scholarship Program - High School Academic Requirements* (visited January 4, 2001) <<http://www.hope.gsfc.org/hope/hop2000.html>>.

number of credit units in delineated core curriculum subjects and maintain a B average in those units.⁹⁰ These standards are set to meet one of the major goals of HOPE: to encourage students to reach and maintain a high level of achievement.⁹¹

HOPE scholarships are tailored to the particular school to which an in-state student is applying.⁹² For public institutions, a student is considered a resident if he or she would meet Board of Regents standards for in-state tuition at the time of their graduation from an eligible high school.⁹³ Children are eligible even if they do not attend school in-state, so long as their parents are Georgia residents.⁹⁴ Full-time status at the institution is not required for HOPE eligibility.⁹⁵ However, a student whose family income is below \$50,000 must first apply for the Federal Pell Grant or other Federal Aid programs by completing the FAFSA.⁹⁶ Otherwise, HOPE will cover all tuition and fees, as well as a book allowance of \$150 per semester.⁹⁷ A student's HOPE status is reviewed each year; failure to maintain a B average as per the requirements of the college or university the student attends results in the loss of the scholarship.⁹⁸ A credit limit of 127 semester

⁹⁰ See *id.* The current HOPE scheme (Class of 2001) requires 4 units each in Math and English Language Arts, 3 units each in Social Studies and Science and 2 units in a Foreign Language, for a total of 16 units. See *id.* The Technical prong does not require the 2 Foreign Language units and only 3 Math units. See *id.* The number of units is lessened if a student intends to seek a technical degree, but the GPA requirement is raised to 85. See O.C.G.A. §20-2-157 (2), (4) (1999). Further, the student must maintain the B average during each of his or her years in college, or risk losing the award. See O.C.G.A. §§20-3-519.2(e) and 519.3(e) (1999).

⁹¹ See The HOPE Scholarship Program - Overview (visited February 25, 2000) <<http://www.hope.gsfc.org/hoperegs00/hpregover.html>>.

⁹² See O.C.G.A. §20-3-519.1(7) (1999).

⁹³ See The HOPE Scholarship Program - Eligibility Requirements for Degree-Seeking Students Attending Public Institutions (visited February 25, 2000), <<http://www.hope.gsfc.org/hoperegs00/hpregia.html>>. The technical schools are included in this section. See *id.* These terms do not apply to students graduating before 1993. See *id.*; O.C.G.A. §20-3-519.2 (1999).

⁹⁴ See *id.* If a child's parents move from the state during their college education, the student does not lose eligibility. See *id.*

⁹⁵ See *id.*

⁹⁶ See *id.* Any HOPE amounts awarded will be reduced depending on the size of the Pell award and the cost of tuition and fees at the institution. See *id.*

⁹⁷ See *id.* For technical schools, the book allowance is decreased to \$100.00. See *id.*

⁹⁸ See The HOPE Scholarship Program - Eligibility Requirements for Degree-Seeking Students Attending Public Institutions (visited February 25, 2000), <<http://www.hope.gsfc.org/hoperegs00/hpregia.html>>. Other than the senior year, eligibility for one year is not dependent upon eligibility for the previous year. See *id.* Non-traditional students may enter the HOPE program only after they have completed the first year of college. See

hours is placed on HOPE eligibility.⁹⁹

For private institutions, a student must attend an eligible Georgia private institution and be classified a legal Georgia resident for the purposes of the Tuition Equalization Grant program at the time of graduation from high school.¹⁰⁰ Unlike their public counterparts, private students must maintain full-time matriculated status at the college or university to remain eligible.¹⁰¹ In addition, all private students must apply for the Georgia Tuition Equalization Grant; those whose incomes are below \$50,000 must also apply for Pell Grant.¹⁰² Private institution HOPE awards are capped at \$3,000 per student.¹⁰³ The annual renewal and credit requirements are applied to public and students.¹⁰⁴

If a student in either a public or private institution fails to maintain a B average during their first year at the institution, they will lose their HOPE eligibility for the following year.¹⁰⁵ The student may regain HOPE eligibility, however, if they bring their GPA back up to the B level during the sophomore year.¹⁰⁶ If a student loses eligibility during their sophomore or junior year, however, they are not able to regain the scholarship.¹⁰⁷ Exceptions are made at all times for extenuating circumstances that affect a student's GPA.¹⁰⁸

id.

⁹⁹ *See id.* The credit limit is adjusted for specific degree programs that may require more than 127 credit hours. *See id.* AP credits, or college credits attempted during high school are not included in this limit, nor are their grades counted as part of the HOPE GPA. *See id.* All other college credits attempted after high school graduation are included in HOPE GPA calculations, including remedial, repeated or institutionally-forgiven courses. *See id.*

¹⁰⁰ *See* The HOPE Scholarship Program - Eligibility Requirements for Degree-Seeking Students Attending Private Institutions (visited February 25, 2000) <<http://www.hope.gsfc.org/hoperegs00/hpregiii.html>>. *See also* O.C.G.A. §20-3-519.3 (1999). Students must have graduated from high school in 1996 or later to be eligible. *See id.* Again, a student meets residency as long as his or her parents are residents and does not lose resident status if the parents or guardians move out-of-state. *See id.*

¹⁰¹ *See id.*

¹⁰² *See id.* The HOPE awards are reduced depending on TEG or Pell awards and the tuition and fees at the particular institution. *See id.*

¹⁰³ *See id.*

¹⁰⁴ *See id.*

¹⁰⁵ *See* The HOPE Scholarship Program - How To Maintain Your HOPE Scholarship (visited February 25, 2000) <<http://www.hope.gsfc.org/hope/mantHOPE.html>>.

¹⁰⁶ *See id.*

¹⁰⁷ *See id.*

¹⁰⁸ *See* The HOPE Scholarship Program - Exceptions (visited February 25, 2000) <<http://www.hope.gsfc.org/hoperegs00/hpregvc.html>>. These exceptions include serious or

Special programs for teachers and those aspiring to teach are also included in the HOPE scholarship program.¹⁰⁹ The HOPE Teacher's scholarship provides grants to persons who wish to obtain advanced degrees in areas where teachers are desperately needed.¹¹⁰ Similarly, the PROMISE teacher scholarship is extended to undergraduate juniors who are enrolled in an approved teacher certification program at a Georgia institution.¹¹¹

C. Critiques

The HOPE program described above is generally considered a resounding success in Georgia.¹¹² Even so, a standard set of critiques has emerged which have followed the program as it is considered in other states and in the federal realm. These critiques include: program cost, the setting of academic standards, grade inflation, limited beneficiaries and the encouragement of higher education cost increases.¹¹³

The cost of HOPE was never really an issue in Georgia.¹¹⁴ All scholarship funds are derived from the state lottery, which did not exist before HOPE.¹¹⁵ The lottery provided a new revenue source for the

extended illness, or the death of a family member. *See id.* Each exception must be documented by a physician or the student's academic dean. *See id.*

¹⁰⁹ *See infra* notes 110-111.

¹¹⁰ *See* O.C.G.A. §20-3-519.8 (1999). *See also* HOPE Fact Sheet - Major Milestones in HOPE History (visited March 1, 2000) <http://www.hope.gsfc.org/press_release/hopefaq.cfm>. To be eligible, an applicant must be currently teaching in Georgia public schools, or have received their baccalaureate or master's degree. *See id.* These scholarships are capped at \$10,000 and require one year of service in a public school for each \$2500 awarded. *See id.* Teacher's scholarship recipients must be Georgia residents. *See id.*

¹¹¹ *See* O.C.G.A. §20-3-519.7 (1999). *See also* HOPE Fact Sheet - Major Milestones in HOPE History (visited March 1, 2000) <http://www.hope.gsfc.org/press_release/hopefaq.cfm>. For eligibility, students must have also earned a 3.6 GPA. *See id.* PROMISE eligibility for seniors is dependent on the student's having received the scholarship while a junior. *See id.* The program provides up to \$6,000 in scholarship money so long as the student agrees to teach in a Georgia public school for one year for each \$1,500 awarded. *See id.*

¹¹² *See supra* notes 62-68.

¹¹³ *See infra* notes 114-133.

¹¹⁴ *See supra* notes 71-77.

¹¹⁵ *See* Beinart, *supra* note 18 at 58. The only real challenge was getting public support for the concept of a lottery. *See id.* Once this was achieved, the state was able to institute this new revenue source, thus avoiding the limitations of scarce budget dollars. *See id.* *See also* Kingdon, *supra* note 14, at 105.

new program, with no effect on taxes or other state-funded programs.¹¹⁶ The more troubling issue, however, is the setting of academic standards for HOPE scholarships.¹¹⁷ In Georgia, the absence of a uniform system of standards before 1995 led to a large number of students losing their HOPE scholarships, or requiring remedial work at the college level, despite meeting the B standard.¹¹⁸

In response to this problem, Georgia established the P-16 initiative, a system of local/regional councils designed to improve the achievement of all Georgia students and ensure their preparedness for postsecondary work.¹¹⁹ These councils convened at different times to ensure the achievement levels set by the state were understood and reached through each council's individualized policies.¹²⁰ The corrections appear to be working; the Council for School Performance found that HOPE students are more likely to remain in college, have higher GPAs and earn more credit hours than non-HOPE colleagues.¹²¹ Students are also better prepared for college-level work, as indicated by

¹¹⁶ *See id.*

¹¹⁷ *See* Judith A. Monsaas, et. al., *Georgia P-16 Initiative: Creating Change Through Higher Standards for Students and Teachers*, 6 Va. J. Soc. Pol'y & L. 179, 179-81 (1998). While a B average seems to be a good generic standard for measurement, the individual expectations and definitions of what constitutes B work vary greatly among schools. *See id.* at 179-80.

¹¹⁸ *See id.* at 179. In 1999, over 75% of the students who earned HOPE lost the scholarship. *See* 1999 Report, *supra* note 66 at 2. However, the need for remedial work and the dropout rate has decreased. *See id.* at 18.

¹¹⁹ *See id.* at 185-6. The initiative also focused on closing the achievement gaps between minority and majority groups and improving the quality of the teachers in the classrooms. *See id.* at 186, 192. The P-16 Initiative also addressed educational home rule in Georgia, which mirrors New Jersey. *See id.* at 186-7. *See also supra* notes 49-50.

¹²⁰ *See id.* at 187. Of course, these standards were not easily implemented. *See id.* at 191. Debates immediately ensued over whether the standards were too stringent, or not strict enough. *See id.* Further, the multiplicity of existing standards areas necessitated the creation of achievement standards that blended the varied existing standards. *See id.* Finally, bringing the teachers up to snuff was also difficult; the need for better teacher preparedness was one of the driving forces behind the HOPE and PROMISE Teacher Scholarships. *See id.* at 192.

¹²¹ *See HOPE Fact Sheet - Major Milestones in HOPE History* (visited March 1, 2000) <http://www.hope.gsfc.org/press_release/hopefaq.cfm>. While the number of students who lose HOPE remains relatively high, almost 60% of the students who lost the scholarship in 1999 remained in school. *See* 1999 Report, *supra* note 66 at 2. Further, in 1998, 86.4% of Georgia students reported having a "B" or better average, up from 82.1% in 1993. *See id.* at 6. Lastly, the number of students attempting advanced-placement or college-level courses has tripled as of 1997. *See* Daniel Pederson and Pat Wingert, *Some HOPE for College: Can Georgia's Scholarship Go Nationwide?*, NEWSWEEK, February 3, 1997, at 44.

an increase in college-prep diplomas and a decline in the need for remedial courses in college.¹²²

Grade inflation is also a fear in Georgia and in other states looking to implement the program.¹²³ Faculty members in both high school and college are likely to feel the pressure of the B-average requirement due to the amount at stake in receiving a HOPE Scholarship.¹²⁴ A recent study undertaken by the Council for School Performance shows that HOPE has not caused the grade inflation effect which many feared.¹²⁵ Instead, the scholarship has encouraged students to work harder, parents to become more involved in their children's work, and has increased the expectations of students at all income levels that they will be able to attend college.¹²⁶

The question of who actually benefits from HOPE lingers, but has not become a serious political issue in Georgia.¹²⁷ Many experts feel that the students who would benefit most from HOPE are white, middle-income, Ivy-caliber students who will have no problem meeting the educational standards required for HOPE.¹²⁸ This assessment is

¹²² See 1999 Report, *supra* note 66 at 18.

¹²³ See Ted Marchese, *The Dangers of HOPE*, CHANGE, May/June 1997, at 4.

¹²⁴ See *id.*

¹²⁵ See *Council Finds HOPE Does Not Cause Grade Inflation*, Georgia Council For School Performance Press Release, Wednesday November 17, 1999 (visited February 25, 2000) <http://arcweb.gsu.edu/csp/csp_hopenews.html>. A 1999 study found that grade inflation was a national trend, occurring before the inception of the HOPE scholarship. See 1999 Report, *supra* note 66 at 2. To test whether HOPE had exacerbated this trend in Georgia, the study compared the rise of student GPAs in Georgia with the students' SAT scores, which are less likely to be affected by grade inflation. See *id.* at 6. The comparison found that the increase in student GPAs was matched by a similar, though less dramatic increase in SAT scores. See *id.* at 6-7. Even students not eligible for HOPE saw an increase in SAT scores, another sign that the GPA increases were not wholly grade inflation-driven. See *id.* at 7.

¹²⁶ See *id.*

¹²⁷ See Peter Applebome, *Clinton's College Aid Plan Faces Doubt From Experts*, THE NEW YORK TIMES, March 30, 1997, at A12.

¹²⁸ See Marchese, *supra* note 123, at 4. Given that the poorest-quality schools are generally centered in the poorest neighborhoods, low-income families seem to have little chance of benefitting from HOPE. See Monsaas, *supra* note 117 at 179 (finding that students receiving grades of "A" in low-income schools test at the "C" level for higher-income students). Thus, low-income students are more likely to lose HOPE scholarships that require the maintenance of a "B" average in high-standard colleges. See *id.* Students receiving Pell Grants also remain largely ineligible for HOPE, due to the fact that the scholarship is reduced by the amount of Pell money received by the students. See O.C.G.A. §20-3-519.10. See also Peter Applebome, *Aid Plan That Inspired Clinton Is a Success*, THE NEW YORK TIMES, Thursday June 6, 1996 at A20 (finding that the median household income for HOPE recipients was \$44,876, while the state median was \$29,021).

slightly inaccurate: a recent study found that HOPE has led to a substantial increase in the number of minority students and a slight decrease in the number of white students enrolling at Georgia institutions.¹²⁹ However, despite these racial gains, there remains little question that middle class families are the primary beneficiaries of HOPE, while lower-income persons bear most of the cost.¹³⁰

Experts are also concerned that scholarships of this nature can lead colleges to increase tuition at even higher rates.¹³¹ As of the writing of this note, no evidence could be found that the institution of HOPE has led to a sharp increase in tuition costs in Georgia, but the state may need to consider incentives for tuition restraint¹³² in the future, should the problem arise. While some of the major critiques of HOPE still remain in Georgia, the state's broad view of the education realm, its financial and programmatic commitment to its students and its innovative education policies ensure the scholarship's success in Georgia for years to come.¹³³

IV. Manifestations of HOPE

A. Similar State Programs

The success of Georgia's program coupled with the new fervor for performance-based student aid has prompted a number of states to

¹²⁹ See 1999 Report, *supra* note 66 at 12-13. Since the inception of HOPE, African-American enrollment at Georgia institutions has increased 32.8%, Asian students have increased by 42.8% and Hispanic students' numbers have increased 69.2%. See *id.* at 13. White student enrollment decreased a scant .3%. See *id.*

¹³⁰ Statistics in Georgia show that the persons most likely to buy lottery tickets are those with the lowest incomes. See Beinart, *supra* note 18 at 58. In a very real way, then, the burden for funding HOPE is placed on lower-income families. See *id.* Thus, while the lottery has been a solid source of scholarship funding in Georgia, it is not a perfect source. See *id.* See also 1999 Report, *supra* note 66 at 3 (citing a HOPE critic who calls the lottery-based funding system an "income transfer" from the poor, who are more likely to play the lottery, to the well-off who are more likely to be HOPE recipients).

¹³¹ See Marchese, *supra* note 120, at 4. Colleges are apt to assume that since students' financial burdens are being eased by the direct aid provided by scholarships like HOPE, they can increase tuitions even more in the hope that the government will keep pace. See *id.* In addition, with rising costs and scarce funding a constant concern in higher education, scholarships like HOPE could force university budget dollars away from student programs and toward other goals as a result of this perceived windfall. See *id.*

¹³² See *id.* (suggesting that tuition restraint incentives may be necessary in conjunction with President Clinton's HOPE Tax Credit).

¹³³ See generally Part III.

devise scholarship programs similar to HOPE.¹³⁴ During the 1998 elections for governor, candidates in both Alabama and South Carolina promised similar lottery-funded scholarship programs.¹³⁵ By 1999, a total of eight states had enacted HOPE-like programs.¹³⁶ Major differences in the programs included higher or more multi-faceted grade standards, income caps, decreased scholarship awards and a focus on standardized testing more than GPA.¹³⁷ The changes to the Georgia model reflect the ongoing critiques of HOPE.¹³⁸

B. *The Federal HOPE Tax Credit*

In 1996, President Clinton proposed a HOPE-like plan as a central prong of his re-election campaign.¹³⁹ After his re-election, Clinton drafted and enacted the HOPE Tax Credit, which provides a tax credit up to \$1,500 for each student enrolled in a higher education

¹³⁴ See generally Kenneth H. Ashworth, *Performance-Based Funding in Higher Education: The Texas Case Study*, in CHANGE 8, 10 (November/December 1994). See also *Versions of HOPE Scholarships* - ECS (visited March 1, 2000) <<http://www.ecs.org/ecs/ecsweb.nsf>>.

¹³⁵ See Peter Beinart, *The Carville Trick*. TIME, November 16, 1998, at 58.

¹³⁶ See *id.* (specifically referring to the scholarships' B-average requirements, in-state applicability and middle-income family focus).

¹³⁷ See *Versions of HOPE Scholarships* - ECS (visited March 1, 2000) <<http://www.ecs.org/ecs/ecsweb.nsf>>. Specifically, Florida, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri and South Carolina all proposed HOPE-like scholarship programs. See *id.* Seven other states, Illinois, Minnesota, New York, North Dakota and Ohio had introduced other performance-based scholarships by 1999, but these strayed further away from HOPE. See *id.* Maryland and South Carolina also added scholarship programs that fit this category. See *id.* Many of these grants were limited in number, focused on particular education areas and incorporated differing grade standards for receipt. See *id.* Seven other states, specifically, Vermont, California, Connecticut, Indiana, Iowa and New Mexico were unable to pass legislation in 1999. See *id.* Mississippi had a different education program rejected as well. See *id.*

¹³⁸ See *supra* Part IIIC. Many states chose to limit the amount or incidence of the scholarships due to the high cost of providing them. See generally *supra* notes 114-116. The limiting of award dollars to small amounts may also be seen as a method of combating college tuition increases; small awards will not beget large price increases. See generally *supra* notes 131-132. Further, the move to using SATs or other standardized tests as a measure of eligibility speaks to the troublesome nature of accurate standard-setting. See generally *supra* notes 117-118. The use of standardized tests also addresses the issue of grade inflation in individual schools. See generally *supra* notes 123-126. Finally, most states have simply acknowledged that their scholarship programs have a middle-class focus, rather than bill them as aids to low-income students. See generally *supra* notes 127-130.

¹³⁹ See Daniel Pederson and Pat Wingert, *Some HOPE for College*, NEWSWEEK February 3, 1997, at 44.

institution.¹⁴⁰ The credit is not grade-based, but students are required to be enrolled at least half-time in a degree program.¹⁴¹ Further, the credit may be claimed for only two years and is phased out for families who meet set income levels.¹⁴²

President Clinton's plan brought swift, but familiar criticism from college funding experts.¹⁴³ Although the cost of the plan became an issue, the income phaseout, two-year eligibility limit and the size of the award allayed this fear somewhat.¹⁴⁴ Ultimately, the limited benefit of the credit led more experts to assert that Clinton's plan provided too little benefit to even be compared to HOPE.¹⁴⁵

Criticism also arose as to the setting of academic standards and grade inflation.¹⁴⁶ Clinton's original plan called for the credit to be granted to students who earned and maintained a B average during their first two college years.¹⁴⁷ In response, concerns were raised about the real uniformity in GPAs at both the college and high school level.¹⁴⁸ Legislators wanted to know exactly what type of education the credit was intended to benefit. Due to the lack of uniform standards among high schools, they feared the credit would fund two years of remedial education for some students, rather than the higher education that was supposed to be provided at the college level.¹⁴⁹

The HOPE credit was also criticized as useful only to higher-income persons and as an incentive for colleges to raise already high

¹⁴⁰ See INTERNAL REVENUE SERVICE, PUBLICATION 97, TAX BENEFITS FOR HIGHER EDUCATION, 3 (1998). The HOPE Credit is coupled with a number of other education savings programs and with the Lifetime Learning Credit, which provides a \$1,000 credit at all higher education levels for families who qualify. See *id.*

¹⁴¹ See *id.*

¹⁴² See *id.*

¹⁴³ See *infra* notes 144-154.

¹⁴⁴ See generally Peter Applebome, *Clinton's College Aid Plan Faces Doubt From Experts*, THE NEW YORK TIMES, March 30, 1997, at A12. See also INTERNAL REVENUE SERVICE, PUBLICATION 97, TAX BENEFITS FOR HIGHER EDUCATION, 3 (1998).

¹⁴⁵ See Peter Applebome, *Aid Plan That Inspired Clinton Is a Success*, THE NEW YORK TIMES, Thursday June 6, 1996 at A20.

¹⁴⁶ See Lustig, *supra* note 2, at 269.

¹⁴⁷ See Stacy Perman, *His Plan: More Harm Than Good?* TIME, June 14, 1996 at 24. The current HOPE Credit has abandoned the B requirement, mandating only enrollment for a certain number of credits. See INTERNAL REVENUE SERVICE, PUBLICATION 97, TAX BENEFITS FOR HIGHER EDUCATION, 3 (1998).

¹⁴⁸ See *id.* See also Eric A. Lustig, *supra* note 2, at 269. Inclusion of the grade standards would have led to tax law intervention into the realm of education policy. See *id.*

¹⁴⁹ See Perman, *supra* note 147, at 24.

tuition.¹⁵⁰ Critics asserted that a tax credit benefits those who have already paid college tuition, not those who cannot afford the cost at the outset.¹⁵¹ In fact, many experts believed that the credit would actually drive college costs up.¹⁵² In debates about the credit, congressional leaders "hinted that incentives for tuition restraint might be in the wind."¹⁵³ Conversely, education experts would prefer that the money set aside for the credit be used instead for direct student aid or expenditure programs, rather than have the credit benefit the few at the expense of the many paying college tuition.¹⁵⁴

With the HOPE Credit only a few years old, its effects, and thus the accuracy of these concerns, cannot yet be gauged. However, given the fact that performance-based incentives for higher education achievement have spawned consistently similar areas of concern, both the states and the Federal government must closely monitor the effects of Federal HOPE.¹⁵⁵

V. NJHOPE

A. Background

The prospect of bringing HOPE to New Jersey first gained serious momentum in 1998, due to a series of articles in the Asbury Park Press which analyzed the costs of tuition in New Jersey and named HOPE as a plausible solution.¹⁵⁶ In response to these discussions, Assemblyman Gerald Luongo, R-Turnersville, spoke with his constituents and began to consider the prospects for tuition relief in the state.¹⁵⁷

¹⁵⁰ See Lustig, *supra* note 2, at 269 (citing Martin A. Sullivan, *Clinton's Proposed Tuition Breaks Raise Questions on Several Fronts*, in TAX NOTES TODAY, Dec. 17, 1996, available at LEXIS 96 TNT 244-2).

¹⁵¹ See Applebome, *supra* note 145.

¹⁵² See *id.* See also Lustig, *supra* note 2, at 269. The heaviest criticism of the credit was levied on this front; most legislators believed that colleges would simply use the tax credit as an excuse to raise tuition and further line their coffers. See Perman, *supra* note 147, at 24.

¹⁵³ See Marchese, *supra* note 123, at 4.

¹⁵⁴ See Applebome, *supra* note 145.

¹⁵⁵ See *supra* Parts III and IV.

¹⁵⁶ See Telephone Interview with Senator John O. Bennett III, R-Monmouth, Senate Majority Leader, March 3, 2000.

¹⁵⁷ See Alan Guenther, *Students, Kin, Lawmaker Press for More Aid at Rutgers*, ASBURY PARK PRESS, October 24, 1999, at 17.

In 1998, he devised a proposal to establish HOPE in New Jersey, with the funding to come from a 1% increase in the Sales Tax.¹⁵⁸ More importantly, the tax increase would be specially earmarked as HOPE funding.¹⁵⁹ The proposal received positive support among the public, an unexpected result given the state's disdain for tax increases.¹⁶⁰ However, the tax increase was never discussed in the Legislature.¹⁶¹ Legislators swiftly responded that while the idea of tuition relief was important to them, they would not support funding such a program through a tax increase.¹⁶²

While the tax increase met an untimely end, the momentum generated for tuition relief remained intact as legislators held public hearings to discuss the idea of HOPE and other proposals for tuition relief.¹⁶³ As more data surfaced regarding the rising costs of college, lawmakers began to indicate their support for a free tuition program, but were unwilling to commit to HOPE without considering other possibilities.¹⁶⁴ As a result of these hearings, several proposals surfaced as alternatives to HOPE, all with the goal of reducing tuition costs.¹⁶⁵

In response to the serious funding concerns expressed by legislators, the HOPE proposals brought forth at the hearings advocated

¹⁵⁸ See Alan Guenther, *Lawmaker Seeks 1-Cent Boost in Sales Tax*, ASBURY PARK PRESS, November 19, 1998, at 1. Luongo's tax increase would net \$834 million, enough to fund NJHOPE, increase aid to public schools and eliminate school taxes for certain seniors. *See id.*

¹⁵⁹ *See id.*

¹⁶⁰ See Alan Guenther, *Tax For Tuition-Free College Supported*, ASBURY PARK PRESS, January 10, 1998, at 23. A Gannett poll included with the article showed 76% of those surveyed would support a HOPE program. *See id.* However, this support was conditioned on the fact that the money raised remain strictly earmarked for the programs proposed. See Alan Guenther, *Tax Hike For Tuition a Tough Sell in New Jersey*, THE COURIER-NEWS, November 23, 1998, at 6.

¹⁶¹ See Alan Guenther, *Lawmakers Won't Back Sales Tax Rise*, ASBURY PARK PRESS, February 5, 1999, at 2.

¹⁶² *See id.* Both the Senate president and members of the Assembly believed there were other ways to raise the necessary funds that would allow better control over the funds. *See id.* In addition, Governor Whitman refused her support for the increase, relying on her record as a tax cutter. *See Guenther, supra* note 158, at 1.

¹⁶³ See Alan Guenther, *State Will Study Free College Tuition*, THE COURIER-NEWS, November 17, 1998, at 12.

¹⁶⁴ See John Mooney, *Tuition-Aid Plan Gains Support in Trenton*, THE BERGEN RECORD, February 19, 1999, at 26.

¹⁶⁵ *See id.* Prepaid tuition plans, tuition spending caps and early receipt of college credit are proposals currently being advanced by the Assembly Democratic Caucus. *See Tuition Assistance Plans* (Summary provided by the Assembly Democratic Caucus, received March 2, 2000).

the use of lottery dollars to support the scholarship.¹⁶⁶ With all current lottery dollars allocated, Assemblyman Luongo proposed two new lottery programs to fund HOPE.¹⁶⁷ The first bill advocated the establishment of video poker in New Jersey bars and taverns.¹⁶⁸ This proposal garnered much support among tavern owners, but was strongly opposed by the Atlantic City Casino hotels.¹⁶⁹ Governor Whitman is also on record as opposing the expansion of gambling beyond Atlantic City.¹⁷⁰ The second bill would allow New Jersey to participate in joint lotteries, such as Powerball, to fund the program.¹⁷¹ In 1999, no action was taken on either bill, but the joint lottery HOPE proposal has been reintroduced for the 2000 legislative session.¹⁷²

While HOPE remains a possibility in the minds of legislators, the higher education community has not endorsed the project.¹⁷³ College officials fear that a hastily devised HOPE program will cost the state hundreds of millions of dollars and lead to unforeseen effects if program size and funding are not clearly established.¹⁷⁴ Further, officials have expressed their concern about the system's capacity to absorb the greater number of students the program would encourage to stay in-state for college.¹⁷⁵ Of course, college officials made these

¹⁶⁶ See Rudy Larini, *Tavern Owners Group Views Video Lotteries as a Sure Bet for Education*, THE NEWARK STAR-LEDGER, December 7, 1998, at 14. New Jersey already has a lottery system in place; its funds are allocated to a myriad of state programs, with higher education aid occupying a small percentage of those funds. See Alan Guenther, *Free-Tuition Plan Receives an Initial Cold Shoulder*, ASBURY PARK PRESS, November 22, 1998, at 24. The New Jersey Lottery raises \$650 million each year with \$175 million going to corrections, \$179 million to state psychiatric hospitals and only \$118 million on all of higher education. See *id.* The remaining monies go to primary and secondary schooling. See *id.*

¹⁶⁷ See A-2782 and 2783, 208th Legislature (NJ 1999).

¹⁶⁸ See A-2783, 208th Legislature (NJ 1999). One official estimated that the machines would generate as much as \$300 million for the program. See Rudy Larini, *Tavern Owners Group Views Video Lotteries as a Sure Bet for Education*, THE NEWARK STAR-LEDGER, December 7, 1998, at 14. See also AP, *HOPE Draws Only Critical Response*, THE HOME NEWS & TRIBUNE, June 7, 1999, at 5.

¹⁶⁹ See Larini, *supra* note 166, at 14.

¹⁷⁰ See Alan Guenther, *Lawmakers Are Little Help In Reducing Middle Class Students' Rising Debt Load*, ASBURY PARK PRESS, June 6, 1999, at 18.

¹⁷¹ See A-2782, 208th Legislature (NJ 1999).

¹⁷² See A-1307, 209th Legislature (NJ 2000).

¹⁷³ See AP, *supra* note 168, at 5. The colleges would sooner see a firm vision for education in New Jersey established first; then plans for student aid could be drafted to fit that vision. See *id.*

¹⁷⁴ See *id.*

¹⁷⁵ See Peter Aseltine, *State Seeks to Allay Rising Cost of Tuition*, THE TRENTON TIMES,

statements amid threats of further tuition hikes at state schools earlier that year.¹⁷⁶

B. *Assembly and Senate Proposals For HOPE*

In 1999, Assemblyman Luongo proposed two versions of the HOPE scholarship in New Jersey, one to be funded through participation in joint lotteries and one that would derive funding from video lottery machines.¹⁷⁷ The proposal for the scholarship itself was the same in both bills.¹⁷⁸ However, the proceeds from the video lottery bill would go to HOPE and to senior property tax relief.¹⁷⁹

The joint lottery bill met the same fate as its sister bill.¹⁸⁰ However, this legislation was pre-filed for introduction in 2000, this time by Assemblyman Geist, with no action taken thus far.¹⁸¹ The funding system established in the 1999 and 2000 versions of that bill remains the same.¹⁸² Both bills require public disclosure of the revenues raised and their disbursement to students.¹⁸³ Finally, The Advance Teacher programs proposed in the two bills are identical both to each other and to the Georgia HOPE Teachers Scholarship.¹⁸⁴

December 3, 1998, at 41.

¹⁷⁶ See Alan Guenther, *Hearing to Focus on Tuition at State Colleges*, ASBURY PARK PRESS, January 20, 1999, at 3.

¹⁷⁷ See *supra* note 167. Both bills were introduced on January 12, 1999, with no action taken. See *id.*

¹⁷⁸ See *supra* note 167.

¹⁷⁹ See *supra* note 168.

¹⁸⁰ See *supra* note 171.

¹⁸¹ See *supra* note 172.

¹⁸² Compare A-2782, 208th Legislature (NJ 1999) with A-1307, 209th Legislature (NJ 2000). Both bills call for the establishment of the Joint Lottery Fund, the proceeds of which are earmarked exclusively for HOPE. See *id.*

¹⁸³ See *id.*

¹⁸⁴ See *id.* Both provide forgivable loans up to \$10,000 for certified teachers to return to graduate school and pursue a course of study in a critical shortage field. See *id.* The program is extended to those not certified, but holding baccalaureate degrees. See *id.* Recipients are required to sign contracts with the state that they will complete one year of teaching in New Jersey public schools for each \$2,500 received. See *id.* Failure to do so requires the person to repay the monies given. See *id.* Compare *supra* notes 109-111 and accompanying text.

Despite these similarities,¹⁸⁵ the HOPE programs proposed in the two versions differ in some significant respects. For instance, under Assemblyman Luongo's 1999 bill, first-year students would be eligible for only one-half of the scholarship dollars that NJHOPE normally provides.¹⁸⁶ The eligibility requirements of the bills also differ somewhat.¹⁸⁷ Assemblyman Luongo's version would place a family income cap of \$100,000 on scholarship recipients, much like the early versions of Georgia's program.¹⁸⁸ In addition, the 2000 version cuts out the provisions for non-traditional students contained in the 1999 bill.¹⁸⁹ Lastly, the 1999 version of the bill provided for the loss of a student's scholarship in the event that student is dismissed from an institution for disciplinary reasons.¹⁹⁰ The current version does not contain such a provision.¹⁹¹

The Senate version of HOPE was introduced in 1999 by Senators Martin and Bucco.¹⁹² This bill, with its concurrent resolution, also received no action and expired at the end of the session.¹⁹³ The Senate's HOPE plan was identical to the bill proposed by Assemblyman Geist.¹⁹⁴ However, the Senate bill took the necessary step of adding a concurrent resolution that proposed an amendment to New Jersey's constitution allowing the state to participate in joint lottery programs to support the scholarship.¹⁹⁵ As of the writing of this note, another version has not

¹⁸⁵ *See id.* Both bills establish two HOPE components: the student scholarship and an Advance Teacher Scholarship. *See id.* Both also provide that eligible students will receive full tuition and registration fees at state institutions and a \$200 book allowance. *See id.* Finally, both granted \$3,000 scholarships to students attending independent institutions. *See id.*

¹⁸⁶ *See id.* However, both bills do provide for the renewal of the award throughout the course of a four or five-year degree program. *See id.*

¹⁸⁷ *See id.* Both require recipients to be New Jersey residents, to have graduated from high school in 1996 or later, to earn and maintain a B average during their course of study and to have applied for all other Federal and state forms of financial aid, excluding loans. *See id.* Both bills increase the GPA requirement to 3.2 for students attending technical institutions. *See id.* Lastly, neither bill permits scholarship awards to exceed institutional tuition and fees. *See id.*

¹⁸⁸ *See supra* note 182.

¹⁸⁹ *See supra* note 182.

¹⁹⁰ *See supra* note 182.

¹⁹¹ *See supra* note 182.

¹⁹² *See* S-1608, 208th Legislature (NJ 1999).

¹⁹³ *See id.* *See also* Senate Concurrent Resolution No. 99, 208th Legislature (NJ 1999).

¹⁹⁴ *Compare* S-1608, 208th Legislature (NJ 1999) with A-1307, 209th Legislature (NJ 2000).

¹⁹⁵ *See* Senate Concurrent Resolution No. 99, 208th Legislature (NJ 1999).

been introduced.

C. *The Study Commission*

Amid all the discussion concerning HOPE, Senator John Bennett, Senate Majority Leader, became interested in the possibilities for the NJHOPE program.¹⁹⁶ The numerous tuition relief proposals and the nagging questions about HOPE's practicality in the Garden State, however, gave the Senator pause.¹⁹⁷ As a result, the Senator proposed a bill establishing the HOPE study commission.¹⁹⁸ In his mind, the commission would not only look at the feasibility of HOPE in New Jersey, but would also consider the program in light of other student aid plans which the state already provided.¹⁹⁹

The bill was introduced in the Senate on January 7, 1999, and received a second reading in the Education Committee on February 18.²⁰⁰ The bill was passed unanimously by the full Senate on March 22 and subsequently referred to the Assembly.²⁰¹ The bill was not introduced in the full Assembly until December 2, however, and progressed only as far as a second reading in the Assembly Education Committee on December 6.²⁰² No further action was taken before the term expired.²⁰³ Senator Bennett introduced an almost identical bill for the 2000 term for consideration by the Senate Education Committee.²⁰⁴ On March 23, the bill was passed by the full Senate 35-0 and

¹⁹⁶ See Telephone Interview with Senator John O. Bennett III, R-Monmouth, Senate Majority Leader, (March 3, 2000).

¹⁹⁷ See *id.* Senator Bennett likened the establishment of tuition reform plans without study to "throwing a bowl of spaghetti against a wall and seeing what stuck." *Id.* Yet, he did support the idea of HOPE in New Jersey. See *Feasibility of Free College Scholarship Program to be Studied Under Bennett/Robertson Measure*, Press Release, NJ Senate Republicans, February 10, 2000, at 1.

¹⁹⁸ See *id.* Assemblyman Luongo was wary of the commission, fearing that it would simply kill the idea. See Guenther, *supra* note 170, at 18.

¹⁹⁹ See *supra* note 196. While the focus of the work would be on HOPE, the commission would not close itself off to other possibilities for tuition relief if the debates revealed that they were more feasible. See *id.*

²⁰⁰ See S-1601, 208th Legislature (NJ 1999).

²⁰¹ See *id.*

²⁰² See *id.*

²⁰³ See *id.*

²⁰⁴ See S-255, 209th Legislature (NJ 2000). The bill was introduced on January 11 and received a second reading on February 10.

immediately referred to the Assembly Education Committee.²⁰⁵ As of February, 2001, the bill once again remains inexplicably stalled in the Assembly.²⁰⁶ Repeated calls to the office of the Assembly Education Committee and its chair, Assemblyman Wolfe, for more information on the stall were not returned.²⁰⁷ Although Senator Bennett's office was also unable to explain the Assembly Education committee's failure to act on this bill, he nonetheless remains optimistic about its success and hopeful that the Commission will be allowed to begin its work.²⁰⁸

The current bill before the Senate Education Committee is almost identical to the legislation proposed in 1999, which had the support of both Rutgers University and the NJ State College Governing Boards Association.²⁰⁹ The bill begins by extolling the virtues of HOPE and the benefits it has brought to education in Georgia.²¹⁰ In light of these benefits, the bill proposes the establishment of a 15-member Commission to study the HOPE Scholarship program and determine its feasibility in New Jersey.²¹¹ To ensure efficient work, the Commission is required to organize within 15 days of the appointment of its members and has six months from that date to issue its final report to the Governor and Legislature.²¹²

The composition of the Commission was the most trying issue facing the bill.²¹³ The original version of the bill called for 10 of the Commission's 15 members to be appointed from the public.²¹⁴ The

²⁰⁵ *See id.*

²⁰⁶ *See id.*

²⁰⁷ Calls were placed on January 12, 19, and 26, 2001 and on February 2, 2001. Each time, a message was taken and a return call promised, but no response was ever made.

²⁰⁸ *See* Telephone Interview with Senator John O. Bennett III, R-Monmouth, Senate Majority Leader, (January 12, 2001).

²⁰⁹ *Compare* S-1601, 208th Legislature (NJ 1999) *with* S-255, 209th Legislature (NJ 2000).

²¹⁰ *See* S-255, 209th Legislature (NJ 2000) (amended February 10, 2000).

²¹¹ *See id.* The Commission is granted authority to set the specific parameters for the scholarship, including revenue sources, if it finds the plan acceptable for the state. *See id.* The Commission is granted \$5,000 to do its work. *See id.*

²¹² *See id.*

²¹³ *See* S-255, 209th Legislature (NJ 2000) (introduced January 11, 2000).

²¹⁴ *See id.* Each of the following are responsible for appointing two of the ten public members: The President of the Senate, the Speaker of the Assembly, the minority leaders of the Senate and the Assembly and the Governor. *See id.* The Senate President and the Assembly speaker were each able to appoint two non-public members, but their appointments needed to be from different political parties. *See id.* Finally, a representative from the Office of Student Assistance was to be named, however this person would be a non-voting member. *See id.*

amended version calls for 14 of the members to be publicly appointed, eliminating the four members of the Legislature originally included.²¹⁵ This amended version was reported for a second reading and passed by the Senate Education Committee on February 10, 2000.²¹⁶

D. *Current Concerns in New Jersey*

The litany of concerns facing NJHOPE and the proposed study commission are familiar.²¹⁷ Funding remains the main barrier to the establishment of HOPE in New Jersey.²¹⁸ Concerns over the setting of standards have not yet reached public debate, but legislators are certainly aware of the possible problems of grade inflation.²¹⁹ Short order may be made of another concern as well: New Jersey legislators have acknowledged that the HOPE program would likely be most beneficial to the middle class.²²⁰

Legislators are most concerned about the effect HOPE will have on college tuition.²²¹ Many in the higher education community fear that a scholarship of this nature will result in tuition rising to meet scholarship dollars, thus negating any benefit.²²² At least one higher education watchdog has expressed a preference that new monies raised for higher education be allocated to the universities themselves as a means of reducing tuition costs, or to existing direct student aid

²¹⁵ See S-255, 209th Legislature (NJ 2000) (amended February 10, 2000). The four additional public members would still be appointed by the President of the Senate and the Assembly Speaker, respectively, however, the new version of the bill requires at least one of each person's appointees to be a member of the Higher Education community. *See id.*

²¹⁶ *See id.*

²¹⁷ *See supra* Parts III and IV.

²¹⁸ *See supra* notes 158-162 and 166-172. The debate over taxes and lottery programs will be the most important topic discussed in HOPE conversations. *See id.* With legislators against tax increases or expansion of Atlantic City-style gambling beyond that city's confines, the only viable solution for funding seems to be the joint lottery option. *See id.*

²¹⁹ *See Tuition Assistance Plans* (Summary provided by the Assembly Democratic Caucus, received March 2, 2000). The Democratic Caucus finds that grade inflation has indeed become a reality in Georgia. *See id.* A recent report from Georgia contradicts this finding. *See supra* note 125.

²²⁰ *See* Guenther, *supra* note 10, at 17. With the state receiving high marks for the dispensation of need-based aid and further increases on that front promised in the future, HOPE's middle-class focus is not a state concern. *See supra* note 29. New Jersey has received recognition for its efforts to increase higher education funding. *See supra* note 29.

²²¹ *See* Asteltine, *supra* note 175, at 42.

²²² *See id.*

programs.²²³

Another concern is specific to New Jersey: the capacity of the Higher Education system.²²⁴ HOPE will likely reduce New Jersey's outmigration rate, just as it did in Georgia.²²⁵ Further, HOPE will create greater access to college for at least some part of the 45% of families for whom cost was a prohibition in choosing a college.²²⁶ These facts create serious questions about the higher education system's ability to handle the influx of new students.²²⁷ With a recent report finding that the New Jersey higher education system currently operates at full capacity²²⁸ (and is in need of more institutions in some target areas), providing greater access may indeed be "putting the cart before the horse."²²⁹

VI. Conclusion: Is there HOPE for New Jersey?

Despite the nagging and valid concerns over the establishment of HOPE, New Jersey is a prime candidate for the scholarship. Not only would HOPE be an aid to cash-strapped middle-class families, it could also increase academic performance and allow for the shifting of some need-based dollars to capital or operating budgets. However, the difficulties in applying the scholarship²³⁰ to New Jersey do merit a serious study of the effects the award will have on the state's higher education system. Thus, while the state should ultimately adopt HOPE, it should first approve Senator Bennett's Study Commission and allow that Commission to develop a real understanding of HOPE.

On this point, the persistent unwillingness of the Assembly Education Committee to entertain this bill remains a puzzle. However, its refusal to explain its failure to act is simply inexcusable. If the

²²³ See *id.*

²²⁴ See *id.* While this concern has not yet materialized in Georgia, it is a potential problem that many in the state are monitoring. See 1999 Report, *supra* note 66 at 14.

²²⁵ See *supra* notes 51, 64.

²²⁶ See Guenther, *supra* note 160, at 23.

²²⁷ See Asteltine, *supra* note 175, at 42.

²²⁸ See New Jersey Commission on Higher Education, *Recommendations on the Capacity of New Jersey's Higher Education System 1997-1998, Conclusions* (visited February 3, 2000) <<http://www.state.nj.us/highereducation>>.

²²⁹ See Asteltine, *supra* note 175, at 42. Many experts suggest that badly-needed capital construction and modernization should be completed before offering a scholarship that will increase the system's substantial student population. See *id.*

²³⁰ See *supra* Part V.

Committee sees real problems with the bill, then it should make those concerns known so that they might be fixed. Unfortunately, the Committee's reluctance to speak on the matter likely indicates a less noble reason for the bill's inertia: political gamesmanship. The Committee must realize that its secretive political activity serves neither the Republican Party nor the citizens of New Jersey well. The Assembly Education Committee should give this bill and the students of New Jersey the attention they deserve and allow this Commission to be created. If this does not happen, Senator Bennett should remain true to his desire to help New Jersey undergraduates and continue to re-introduce the bill until the Assembly is willing to listen. Studying the practicality of this potential boon to debt-strapped students and families can do no harm.

No Study Commission will be successful, however, until a few steps are taken. First, like Georgia, the state must recognize that higher education is just as important as elementary and secondary education.²³¹ The quote cited at the beginning of Part II aptly describes the state's current treatment of higher education funding: always spoken of as a top priority, but with little financial might to back those strong words.²³² The low priority that the Assembly Education Committee has accorded to the Study Commission and to the persons who advocate on its behalf supports this theory as well.²³³ Legislators' and educators' support of higher education remains mere rhetoric without real fiscal support.

Similarly, the state must also recognize the cost-prohibitiveness of higher education. Middle and upper-middle-class families (even those making more than \$100,000) are in the same position as lower-income families when faced with the prospect of paying for college. Students should not be kept from attending quality public schools because of cost. The state does not permit this at the lower levels of education; it must no longer allow it at the higher education plateau.

Finally, the higher education interests must strive to find their political niche in the state. The localized home rule system²³⁴ operates against higher education institutions, which are by nature statewide or national entities. With so many students leaving the state for college

231 See *supra* Part III.

232 See *supra* Part II.

233 See *supra* Part II.

234 See *supra* Part II.

and many of the remainder unable to afford the high tuition, local-minded parents (and thus legislators) have little incentive to provide for higher education expenses that their children will likely never use. Educational interest groups must unite with the rest of the education community as a statewide force advocating an increase in the accessibility of higher education for *all* sectors of the student population, rather than only the lowest-income students.

Once these realizations are made, the Commission can begin to do its work. The funding issue remains the biggest barrier to real discussion about the program itself and must be addressed first.²³⁵ While a tax increase is not appealing, the Commission should take this option out of the realm of taboo. With the state already heavily invested in lottery programs, joining another lottery venture may not be as successful as anticipated. Alternatively, a tax increase would provide a larger revenue source and could allow the state to include earmarked funds for capital construction. Legislators must understand that the public does not necessarily detest taxes per se, but does despise the raising of taxes without a clear and committed goal in mind. Public opinion alone merits the reconsideration of Assemblyman Luongo's tax proposal.²³⁶

In addition, New Jersey cannot hope to successfully operate the scholarship without establishing well-defined academic standards for high school students and providing the tools to attain those standards. Failure to do so would run the risk of students losing HOPE eligibility too soon after entry into college, as seen in Georgia.²³⁷ Further, serious monitoring must be done to ensure grade inflation does not become prevalent. While no teacher wants to give the grade that costs a student a scholarship, the academic integrity of the educational system must not be compromised. Lastly, the stigma of providing middle class education benefits must be erased. The "they'll pay anyway" attitude has no place in education, where children's futures are at stake. Merit-based benefits are not middle-class pandering. Rather, such benefits reward hard work and are heavily supported by most voters.

Finally, the two main effects on the state higher education system must be considered. NJHOPE will not work without accompanying

²³⁵ See *supra* Part V.

²³⁶ See *id.*

²³⁷ See *supra* Part III.

tuition caps or reduction incentives.²³⁸ Regardless of the validity of the reasons, higher education institutions will raise their tuition to meet and consequently negate substantial aid packages. The capacity problems also merit concern. Although New Jersey institutions will likely have difficulty accommodating the larger number of students anticipated by the creation of the HOPE program, tuition relief is imperative now and cannot wait the years needed to make the necessary capital improvements to schools. If the proposed Commission recommends NJHOPE, it should also recommend an accompanying increase in the capital monies given to colleges and earmark those funds from either new or existing revenue sources.

The answers to the concerns brought forth in this note cannot be devised overnight. They must be fully addressed and aired in a properly focused and efficient study commission like the one proposed by Senator Bennett. Once established, the Commission must dedicate itself to gaining a true understanding of the plight of New Jersey students, to answering the concerns associated with merit-based scholarships, and ultimately to devising a plan to bring HOPE to New Jersey.

²³⁸ See *supra* Parts III and IV.