Senate Bill 66

By: Senators Anavitarte of the 31st, Payne of the 54th, Mullis of the 53rd, Cowsert of the 46th, Strickland of the 17th and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 20 and Title 48 of the Official Code of Georgia Annotated, relating to education and revenue and taxation, respectively, so as to authorize a nonprofit corporation incorporated by the Georgia Foundation for Public Education to receive private donations to be used for grants to public schools; to provide for the expiration of the Public Education Innovation Fund Foundation's authority to promote public-private partnerships and to receive private donations to be used for grants to public schools; to provide for grant criteria; to provide for the dissolution of the Public Education Innovation Fund Foundation; to revise definitions; to provide for an income tax credit for qualified education donations; to provide for conditions and limitations; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

13 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended in Article 1 of Chapter 2, relating to the State Board of Education, by revising Code Section 20-2-14.1, relating to the Georgia Foundation for Public Education, authorization to accept
transfers of certain property held in trust by State Board of Education, authorization for nonprofit corporation, and annual report, as follows:

"20-2-14.1.
(a) There is established the Georgia Foundation for Public Education existing as a public corporation and instrumentality of the state, exclusively limited to the following charitable and public purposes and powers:

(1) To solicit and accept contributions of money and in-kind contributions of services and property for the purpose of supporting educational excellence in Georgia;
(2) To solicit and accept contributions of money and in-kind contributions of services and property for the purpose of supporting educational excellence at Georgia Academy for the Blind, Georgia School for the Deaf, and Atlanta Area School for the Deaf;
(3) To accept transfer of any donation, gift, devise, or bequest of real, personal, or mixed property of any kind and character held in trust by the State Board of Education to manage and otherwise administer. This paragraph shall apply to any donation, gift, devise, or bequest of real, personal, or mixed property of any kind and character held in trust by the state board pursuant to Article VIII, Section II, Paragraph I(c) of the Georgia Constitution, subsection (a) of Code Section 20-2-14, or Code Section 20-2-18;
(4) To sell and dispose of contributed property and securities in accordance with the prudent person rule;
(5) To make and disburse contributions to the department and others for such purposes;
(6) To contract and be contracted with for purposes of the foundation; and
(7) To seek recognition of tax exempt status by the United States Internal Revenue Service and to seek confirmation concerning the deductibility of contributions.
(b) The Georgia Foundation for Public Education shall be attached to the department for administrative purposes. The Attorney General shall be the attorney for the foundation. The State School Superintendent may solicit and accept contributions from the foundation. The department may cooperate and contract with the foundation for their mutual benefit

S. B. 66
- 2 -
and authorize others to do so. Upon any dissolution of the foundation, its assets shall
devolve in trust to the State Board of Education or its successor for use only for the benefit
of the department, and the schools listed in paragraph (2) of subsection (a) of this Code
section, and schools that meet the criteria provided in subparagraph (g.1)(1) of this Code
section.

(c) The creation incorporation of the foundation and the execution of its corporate
purposes shall be in all respects for the benefit of the people of this state and constitute a
public and charitable purpose. Further, the foundation performs an essential governmental
function in the exercise of the powers conferred upon it by this Code section. Accordingly,
the foundation shall not be subject to taxation or assessment in any manner, including
without limitation taxation or assessment upon any transaction, income, money, or other
property or activity. The exemptions granted by this Code section shall not be extended
to any private person or entity.

(d)(1) The foundation shall be governed by a board of directors composed of between
at least five and fifteen members as determined by the State School Superintendent.
Members of the board of directors shall be appointed by either the State School
Superintendent or the State Board of Education. For every three board members
appointed by the State School Superintendent, the State Board of Education may appoint
two board members. At least two members of the board of directors appointed by the
State Board of Education shall represent the interests of students who are blind or deaf.
The chairperson of the Budget and Finance Committee of the State Board of Education,
or such committee's successor, shall be an ex officio member of the foundation board of
directors. The foundation board of directors shall draft and adopt governance bylaws,
subject to approval by the State School Superintendent.

(2) The foundation shall have complete discretion to invest any and all assets as it sees
fit in accordance with the prudent person rule, and at no time shall the assets of the
foundation be considered assets of the state.
(3) The foundation shall not be subject to state purchasing laws, as contained in Article 3 of Chapter 5 of Title 50 or in other provisions of this Code, or required to dispose of property in accordance with Article 4 of Chapter 5 of Title 50.

(4) The foundation shall be authorized to purchase insurance as provided by Code Section 50-5-16.

(5) The foundation shall have the authority to roll over any unused funds into the next fiscal year.

(e) The foundation's operations shall not be subject to Article 1 of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

(f) The foundation shall be deemed to be a charitable organization for purposes of voluntary contributions from state employees pursuant to Article 3 of Chapter 20 of Title 45.

(g)(1) The foundation shall have the power and authority to incorporate a nonprofit corporation that could qualify as a public foundation under Section 501(c)(3) of the Internal Revenue Code to aid the foundation in carrying out any of its powers and in accomplishing any of its purposes. Any nonprofit corporation created pursuant to this power shall be created incorporated pursuant to Chapter 3 of Title 14, the 'Georgia Nonprofit Corporation Code,' and the Secretary of State shall be authorized to accept such filing.

(2) Any nonprofit corporation created incorporated pursuant to this Code section shall be subject to the following provisions:

(A) In accordance with the Constitution of Georgia, no governmental functions or regulatory powers shall be conducted by any such nonprofit corporation;

(B) Upon dissolution of any such nonprofit corporation incorporated by the foundation, any assets shall revert to the foundation or to any successor to the foundation or, failing such succession, to the State of Georgia;
(3)(C) As used in this paragraph, the term 'direct employee costs' means salary, benefits, and travel expenses. To avoid the appearance of undue influence on regulatory functions by donors, no more than a combined total of 10 percent of donations to any such nonprofit corporation from private sources, or from taxpayers pursuant to Code Section 48-7-29.21, shall be used for direct employee costs of the foundation;

(4)(D) Any such nonprofit corporation shall be subject to all laws relating to open meetings and the inspection of public records;

(5)(E) The foundation shall not be liable for the action or omission to act of any such nonprofit corporation;

(6)(F) No debts, bonds, notes, or other obligations incurred by any such nonprofit corporation shall constitute an indebtedness or obligation of the State of Georgia nor shall any act of any such nonprofit corporation constitute or result in the creation of an indebtedness of the state. No holder or holders of any such bonds, notes, or other obligations shall ever have the right to compel any exercise of the taxing power of the state nor to enforce the payment thereof against the state; and

(7)(G) Any nonprofit corporation created pursuant to this Code section shall not acquire or hold a fee simple interest in real property by any method, including but not limited to gift, purchase, condemnation, devise, court order, and exchange.

(g.1)(1) Effective January 1, 2022, a nonprofit corporation incorporated by the foundation pursuant to this Code section shall be authorized to receive donations from taxpayers pursuant to Code Section 48-7-29.21 for the purpose of awarding grants to public schools for the implementation of academic and organizational innovations to improve student achievement, with priority given to schools that have performed in the lowest 5 percent of schools in this state identified in accordance with the state-wide accountability system established in the state plan pursuant to the federal Every Student Succeeds Act, and for the dissemination of information regarding successful innovations.
to other public schools in this state. Funds received by the nonprofit corporation for such
purpose may be awarded through a competitive grant process administered by the
foundation. The criteria for awarding such grants shall include the potential to which the
innovation is likely to result in the proposed improvement, the potential for widespread
adoption of such innovation by other public schools in the state, the quality of the
proposed project design, the reasonableness of the costs involved in conducting the
project, and such other criteria which the foundation may deem appropriate and
necessary. The General Assembly may appropriate funds for purposes of this nonprofit
corporation beginning in Fiscal Year 2022.

(2) Such nonprofit corporation shall report to the Department of Revenue, on a form
provided by the Department of Revenue, by January 12 of each tax year the following:

(A) The total number and dollar value of donations and tax credits approved.

Individual contributions shall include contributions made by those filing income tax
returns as a single individual or head of household and those filing joint returns;

(B) The total number and dollar value of corporate donations and tax credits approved;

(C) The total number and dollar value of grants awarded to public schools; and

(D) A list of donors, including the dollar value of each donation and the dollar value
of each approved tax credit.

The Department of Revenue shall post on its website the information received pursuant
to subparagraphs (A) through (C) of this paragraph.

(3) Except for the information reported pursuant to subparagraphs (A) through (C) of
paragraph (2) of this subsection, all information or reports provided by this nonprofit
corporation to the Department of Revenue shall be confidential taxpayer information,
governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether it relates to the donor
or the nonprofit corporation.

(h)(1) Members of the board of directors of the foundation may also serve on the board
of any nonprofit corporation created pursuant to this Code section without
regard to the prohibition set forth in Code Section 45-10-23 or any other similar
prohibition.

(2) Members and former members of the board of directors for the Public Education
Innovation Fund Foundation, incorporated pursuant to Code Section 20-14-26.1, may be
considered by the foundation for membership on the board of directors of the nonprofit
corporation provided for in subsection (g.1) of this Code section.

(i) Any nonprofit corporation created pursuant to this Code section shall make and provide an annual report showing the identity of all donors and the amount each person or entity donated as well as all expenditures or other disposal of money or property donated. A copy of such annual report shall be provided to the Governor, the Lieutenant Governor, and the chairpersons of the House Committee on Education and the Senate Education and Youth Committee."

SECTION 2.
Said title is further amended in Part 2 of Article 2 of Chapter 14, relating to the Office of Student Achievement, by revising Code Section 20-14-26.1, relating to authority to incorporate nonprofit corporation as public foundation, requirements, Public Education Innovation Fund Foundation, and reporting, as effective until December 31, 2023, as follows:

"(a) The office shall have the power and authority to incorporate a nonprofit corporation that could qualify as a public foundation under Section 501(c)(3) of the Internal Revenue Code to aid the office in carrying out any of its powers and in accomplishing any of its purposes. Any nonprofit corporation created pursuant to this power shall be created pursuant to Chapter 3 of Title 14, the 'Georgia Nonprofit Corporation Code,' and the Secretary of State shall be authorized to accept such filing.

(b) Any nonprofit corporation created pursuant to this Code section shall be subject to the following provisions:
(1) In accordance with the Constitution of Georgia, no governmental functions or regulatory powers shall be conducted by any such nonprofit corporation;

(2) Except as provided in paragraph (3) of subsection (b.1) of this Code section, upon dissolution of any such nonprofit corporation incorporated by the office, any assets shall revert to the office or to any successor to the office or, failing such succession, to the State of Georgia;

(3) As used in this paragraph, the term 'direct employee costs' means salary, benefits, and travel expenses. To avoid the appearance of undue influence on regulatory functions by donors, no donations to any such nonprofit corporation from private sources shall be used for direct employee costs of the office;

(4) Any such nonprofit corporation shall be subject to all laws relating to open meetings and the inspection of public records;

(5) The office shall not be liable for the action or omission to act of any such nonprofit corporation;

(6) No debts, bonds, notes, or other obligations incurred by any such nonprofit corporation shall constitute an indebtedness or obligation of the State of Georgia nor shall any act of any such nonprofit corporation constitute or result in the creation of an indebtedness of the state. No holder or holders of any such bonds, notes, or other obligations shall ever have the right to compel any exercise of the taxing power of the state nor to enforce the payment thereof against the state; and

(7) Any nonprofit corporation created pursuant to this Code section shall not acquire or hold a fee simple interest in real property by any method, including but not limited to gift, purchase, condemnation, devise, court order, and exchange.

(b.1)(1) Pursuant to this Code section, the office may establish a nonprofit corporation to be designated as the Public Education Innovation Fund Foundation to promote public-private partnerships between businesses, nonprofit organizations, institutions of higher education, local school systems, and public
schools, for the purpose of improving student achievement. Funds received by the
foundation may be awarded through a competitive grant process administered by the
office. The General Assembly may appropriate funds for purposes of this foundation
beginning in Fiscal Year 2015.

(2)(A) Such foundation shall also be authorized to receive donations from taxpayers
pursuant to Code Section 48-7-29.21 for the purpose of awarding grants to public
schools for the implementation of academic and organizational innovations to improve
student achievement, with priority given to schools that have performed in the lowest
5 percent of schools in this state identified in accordance with the state-wide
accountability system established in the state plan pursuant to the federal Every Student
Succeeds Act, and for the dissemination of information regarding successful
innovations to other public schools in this state. Funds received by the foundation for
such purpose may be awarded through a competitive grant process administered by the
office. The criteria for awarding such grants shall include the potential to which the
innovation is likely to result in the proposed improvement, the potential for widespread
adoption of such innovation by other public schools in the state, the quality of the
proposed project design, the reasonableness of the costs involved in conducting the
project, and such other criteria which the office may deem appropriate and necessary.
The foundation shall not be authorized to withhold any funds to cover costs incurred
in administering the grant process.

(B) The foundation shall report to the Department of Revenue, on a form provided by
the Department of Revenue, by January 12 of each tax year the following:

(i) The total number and dollar value of donations and tax credits approved.
Individual contributions shall include contributions made by those filing income tax
returns as a single individual or head of household and those filing joint returns;
(ii) The total number and dollar value of corporate donations and tax credits
approved;
(iii) The total number and dollar value of grants awarded to public schools; and
(iv) A list of donors, including the dollar value of each donation and the dollar value of each approved tax credit.

The Department of Revenue shall post on its website the information received pursuant to divisions (i) through (iii) of this subparagraph.

(C) Except for the information reported pursuant to divisions (i) through (iii) of subparagraph (B) of this paragraph, all information or reports provided by the foundation to the Department of Revenue shall be confidential taxpayer information, governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether it relates to the donor or the foundation.

(3) The rights and authority granted in paragraph (1) and subparagraph (A) of paragraph (2) of this subsection shall expire at 12:00 Midnight on December 31, 2021.

(4) The office shall take appropriate lawful steps to accomplish the dissolution of the foundation after December 31, 2021. Upon dissolution of the foundation, any assets derived from the receipt of taxpayer donations pursuant to subparagraph (A) of paragraph (2) of this subsection shall revert to the nonprofit corporation incorporated by the Georgia Foundation for Public Education as provided for in subsection (g.1) of Code Section 20-2-14.1, or, failing such succession, to the State of Georgia.

(c) Any nonprofit corporation created pursuant to this Code section shall make public and provide an annual report showing the identity of all donors and the amount each person or entity donated as well as all expenditures or other disposal of money or property donated, except as otherwise provided in paragraph (2) of subsection (b.1) of this Code section. Such report shall be provided to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the House Committee on Education and the Senate Education and Youth Committee. Any such nonprofit corporation shall also provide such persons with a copy of all corporate filings with the federal Internal Revenue Service.”
SECTION 3.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by revising subsections (a), (d), (f), and (g) of Code Section 48-7-29.21, relating to tax credits for qualified education donations, as follows:

(a) As used in this Code section, the term:

(1) 'Qualified education donation' means a donation made by a taxpayer to the nonprofit corporation incorporated by the Georgia Foundation for Public Education as provided for in subsection (g.1) of Code Section 20-2-14.1 or, prior to January 1, 2022, to the Public Education Innovation Fund Foundation for the purpose of awarding grants to public schools in this state incorporated pursuant to paragraph (2) of subsection (b.1) of Code Section 20-14-26.1 for the purpose of awarding grants to public schools in this state.

(2) 'Recipient' means the foundation incorporated pursuant to subsection (b.1) of Code Section 20-14-26.1.

(d)(1) The tax credit shall not be allowed if the taxpayer designates the taxpayer's qualified education donation for the direct benefit of any particular school or program which the taxpayer's child or children attend.

(2) In soliciting donations, the foundation recipient shall not represent that, in exchange for donating to the foundation such recipient, the school a taxpayer's child or children attend shall receive a grant pursuant to subsection (g.1) of Code Section 20-2-14.1 or paragraph (2) of subsection (b.1) of Code Section 20-14-26.1.

(f)(1) In no event shall the aggregate amount of tax credits allowed under this Code section exceed $5 million per tax year.

(2) The commissioner shall allow the tax credits on a first come, first served basis.
(3) For the purposes of paragraph (1) of this subsection, the foundation recipient shall notify a potential donor of the requirements of this Code section. Before making a donation to the foundation recipient, the taxpayer shall electronically notify the department, in a manner specified by the department, of the total amount of donations that the taxpayer intends to make to the foundation recipient. The commissioner shall preapprove or deny the requested amount within 30 days after receiving the request from the taxpayer and shall provide notice to the taxpayer and the foundation recipient of such preapproval or denial which shall not require any signed release or notarized approval by the taxpayer. In order to receive a tax credit under this Code section, the taxpayer shall make the donation to the foundation recipient within 60 days after receiving notice from the department that the requested amount was preapproved. If the taxpayer does not comply with this paragraph, the commissioner shall not include this preapproved donation amount when calculating the limit prescribed in paragraph (1) of this subsection.

The department shall establish a web based donation approval process to implement this subsection.

(4) Preapproval of donations by the commissioner shall be based solely on the availability of tax credits subject to the aggregate total limit established under paragraph (1) of this subsection. The department shall maintain an ongoing, current list on its website of the amount of tax credits available under this Code section.

(g) In order for the taxpayer to claim a tax credit under this Code section, a confirmation of receipt of donation issued by the foundation recipient shall be attached to the taxpayer's income tax return. However, in the event the taxpayer files an electronic return, such confirmation shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments when the return is transmitted to the department. In the event the taxpayer files an electronic return and such confirmation is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such confirmation shall be maintained by the
taxpayer and made available upon request by the commissioner. The confirmation of receipt of donation shall contain the taxpayer's name, address, tax identification number, the amount of the donation, the date of the donation, and the amount of the credit.”

SECTION 4.

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