A BILL TO BE ENTITLED
AN ACT

To amend Article 1 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to the State Board of Education, so as to authorize the Georgia Foundation for Public Education to establish a nonprofit corporation to qualify as a public foundation; to provide for conditions; to provide for an annual report; to provide for a definition; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 1 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to the State Board of Education, is amended by revising Code Section 20-2-14.1, relating to the Georgia Foundation for Public Education and authorization to accept transfers of certain property held in trust by the State Board of Education, 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), Section II.
Article VIII 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 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.
(c) The creation 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 five and 15 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) 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 pursuant to Chapter 3 of Title 14, the 'Georgia Nonprofit Corporation Code,' and the Secretary of State shall be authorized to accept such filing. 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) 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) 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 foundation;

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

(5) The foundation 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.
(h) 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.
(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 chairpersons of the House Committee on
Education and the Senate Education and Youth Committee.”

SECTION 2.
All laws and parts of laws in conflict with this Act are repealed.