

House Bill 130 (AS PASSED HOUSE AND SENATE)

By: Representatives Nix of the 69th, Dickey of the 140th, Gambill of the 15th, Jasperse of the 11th, and Glanton of the 75th

A BILL TO BE ENTITLED
AN ACT

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

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 style="text-align:center">**SECTION 1.**

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

12 "20-2-14.1.

13 (a) There is established the Georgia Foundation for Public Education existing as a public
14 corporation and instrumentality of the state, exclusively limited to the following charitable
15 and public purposes and powers:

16 (1) To solicit and accept contributions of money and in-kind contributions of services
17 and property for the purpose of supporting educational excellence in Georgia;

18 (2) To solicit and accept contributions of money and in-kind contributions of services
19 and property for the purpose of supporting educational excellence at Georgia Academy
20 for the Blind, Georgia School for the Deaf, and Atlanta Area School for the Deaf;

21 (3) To accept transfer of any donation, gift, devise, or bequest of real, personal, or mixed
22 property of any kind and character held in trust by the State Board of Education to
23 manage and otherwise administer. This paragraph shall apply to any donation, gift,
24 devise, or bequest of real, personal, or mixed property of any kind and character held in
25 trust by the state board pursuant to Article VIII, Section II, Paragraph I(c), ~~Section H,~~

26 ~~Article VIII~~ of the Georgia Constitution, subsection (a) of Code Section 20-2-14, or Code
27 Section 20-2-18;

28 (4) To sell and dispose of contributed property and securities in accordance with the
29 prudent person rule;

30 (5) To make and disburse contributions to the department and others for such purposes;

31 (6) To contract and be contracted with for purposes of the foundation; and

32 (7) To seek recognition of tax exempt status by the United States Internal Revenue
33 Service and to seek confirmation concerning the deductibility of contributions.

34 (b) The Georgia Foundation for Public Education shall be attached to the department for
35 administrative purposes. The Attorney General shall be the attorney for the foundation.
36 The State School Superintendent may solicit and accept contributions from the foundation.
37 The department may cooperate and contract with the foundation for their mutual benefit
38 and authorize others to do so. Upon any dissolution of the foundation, its assets shall
39 devolve in trust to the State Board of Education or its successor for use only for the benefit
40 of the department and the schools listed in paragraph (2) of subsection (a) of this Code
41 section.

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

50 (d)(1) The foundation shall be governed by a board of directors composed of between
51 five and 15 members as determined by the State School Superintendent. Members of the
52 board of directors shall be appointed by either the State School Superintendent or the
53 State Board of Education. For every three board members appointed by the State School
54 Superintendent, the State Board of Education may appoint two board members. At least
55 two members of the board of directors appointed by the State Board of Education shall
56 represent the interests of students who are blind or deaf. The chairperson of the Budget
57 and Finance Committee of the State Board of Education, or such committee's successor,
58 shall be an ex officio member of the foundation board of directors. The foundation board
59 of directors shall draft and adopt governance bylaws, subject to approval by the State
60 School Superintendent.

61 (2) The foundation shall have complete discretion to invest any and all assets as it sees
 62 fit in accordance with the prudent person rule, and at no time shall the assets of the
 63 foundation be considered assets of the state.

64 (3) The foundation shall not be subject to state purchasing laws, as contained in Article
 65 3 of Chapter 5 of Title 50 or in other provisions of this Code, or required to dispose of
 66 property in accordance with Article 4 of Chapter 5 of Title 50.

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

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

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

73 (f) The foundation shall be deemed to be a charitable organization for purposes of
 74 voluntary contributions from state employees pursuant to Article 3 of Chapter 20 of Title
 75 45.

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

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

85 (2) Upon dissolution of any such nonprofit corporation incorporated by the foundation,
 86 any assets shall revert to the foundation or to any successor to the foundation or, failing
 87 such succession, to the State of Georgia;

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

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

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

96 (6) No debts, bonds, notes, or other obligations incurred by any such nonprofit
 97 corporation shall constitute an indebtedness or obligation of the State of Georgia nor shall

98 any act of any such nonprofit corporation constitute or result in the creation of an
99 indebtedness of the state. No holder or holders of any such bonds, notes, or other
100 obligations shall ever have the right to compel any exercise of the taxing power of the
101 state nor to enforce the payment thereof against the state; and
102 (7) Any nonprofit corporation created pursuant to this Code section shall not acquire or
103 hold a fee simple interest in real property by any method, including but not limited to gift,
104 purchase, condemnation, devise, court order, and exchange.
105 (h) Members of the board of directors of the foundation may also serve on the board of any
106 nonprofit corporation created pursuant to this Code section without regard to the
107 prohibition set forth in Code Section 45-10-23 or any other similar prohibition.
108 (i) Any nonprofit corporation created pursuant to this Code section shall make and provide
109 an annual report showing the identity of all donors and the amount each person or entity
110 donated as well as all expenditures or other disposal of money or property donated. A copy
111 of such annual report shall be provided to the chairpersons of the House Committee on
112 Education and the Senate Education and Youth Committee."

113 **SECTION 2.**

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