

House Bill 237 (AS PASSED HOUSE AND SENATE)

By: Representatives Coleman of the 97th, England of the 116th, Casas of the 107th, Chandler of the 105th, Nix of the 69th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 20 and Title 48 of the Official Code of Georgia Annotated, relating to
2 education and to revenue and taxation, respectively, so as to authorize the Public Education
3 Innovation Fund Foundation to receive private donations to be used for grants to public
4 schools; to provide for grant criteria; to provide for an income tax credit for qualified
5 education donations; to provide for conditions and limitations; to provide for powers, duties,
6 and authority of the state revenue commissioner with respect to such donations; to provide
7 for related matters; to provide for an effective date; to provide for applicability; to provide
8 for a sunset date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

11 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by
12 revising Code Section 20-14-26.1, relating to the authority of the Office of Student
13 Achievement to incorporate nonprofit corporations as public foundations, as follows:

14 "20-14-26.1.

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

21 (b) Any nonprofit corporation created pursuant to this Code section shall be subject to the
22 following provisions:

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

25 (2) Upon dissolution of any such nonprofit corporation incorporated by the office, any
 26 assets shall revert to the office or to any successor to the office or, failing such
 27 succession, to the State of Georgia;

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

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

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

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

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

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

52 (2)(A) Such foundation shall also be authorized to receive donations from taxpayers
 53 pursuant to Code Section 48-7-29.21 for the purpose of awarding grants to public
 54 schools for the implementation of academic and organizational innovations to improve
 55 student achievement, with priority given to schools that have performed in the lowest
 56 5 percent of schools in this state identified in accordance with the state-wide
 57 accountability system established in the state plan pursuant to the federal Every Student
 58 Succeeds Act, and for the dissemination of information regarding successful
 59 innovations to other public schools in this state. Funds received by the foundation for
 60 such purpose may be awarded through a competitive grant process administered by the
 61 office. The criteria for awarding such grants shall include the potential to which the

62 innovation is likely to result in the proposed improvement, the potential for widespread
 63 adoption of such innovation by other public schools in the state, the quality of the
 64 proposed project design, the reasonableness of the costs involved in conducting the
 65 project, and such other criteria which the office may deem appropriate and necessary.
 66 The foundation shall not be authorized to withhold any funds to cover costs incurred
 67 in administering the grant process.

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

70 (i) The total number and dollar value of donations and tax credits approved.
 71 Individual contributions shall include contributions made by those filing income tax
 72 returns as a single individual or head of household and those filing joint returns;

73 (ii) The total number and dollar value of corporate donations and tax credits
 74 approved;

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

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

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

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

85 (c) Any nonprofit corporation created pursuant to this Code section shall make public and
 86 provide an annual report showing the identity of all donors and the amount each person or
 87 entity donated as well as all expenditures or other disposal of money or property donated,
 88 except as otherwise provided in paragraph (2) of subsection (b.1) of this Code section.

89 Such report shall be provided to the Governor, the Lieutenant Governor, the Speaker of the
 90 House of Representatives, and the chairpersons of the House Committee on Education and
 91 the Senate Education and Youth Committee. Any such nonprofit corporation shall also
 92 provide such persons with a copy of all corporate filings with the federal Internal Revenue
 93 Service."

94 **SECTION 2.**

95 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
 96 amended by adding a new Code section to read as follows:

97 "48-7-29.21.

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

99 (1) 'Qualified education donation' means a donation made by a taxpayer to the Public
100 Education Innovation Fund Foundation for the purpose of awarding grants to public
101 schools in this state pursuant to paragraph (2) of subsection (b.1) of Code Section
102 20-14-26.1.

103 (2) 'Public Education Innovation Fund Foundation' or 'foundation' means the foundation
104 established pursuant to subsection (b.1) of Code Section 20-14-26.1.

105 (b) An individual taxpayer shall be allowed a credit against the tax imposed by this chapter
106 for qualified education donations as follows:

107 (1) In the case of a single individual or a head of household, the actual amount donated
108 or \$1,000.00 per tax year, whichever is less;

109 (2) In the case of a married couple filing a joint return, the actual amount donated or
110 \$2,500.00 per tax year, whichever is less; or

111 (3) Anything to the contrary contained in paragraph (1) or (2) of this subsection
112 notwithstanding, in the case of an individual who is a member of a limited liability
113 company duly formed under state law, a shareholder of a Subchapter 'S' corporation, or
114 a partner in a partnership, the amount donated or \$10,000.00 per tax year, whichever is
115 less; provided, however, that tax credits pursuant to this paragraph shall only be allowed
116 for the portion of the income on which such tax was actually paid by such member of the
117 limited liability company, shareholder of a Subchapter 'S' corporation, or partner in a
118 partnership.

119 (c) A corporation or other entity shall be allowed a credit against the tax imposed by this
120 chapter for qualified education donations in an amount not to exceed the actual amount
121 donated or 75 percent of the corporation's income tax liability, whichever is less.

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

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

128 (e) In no event shall the total amount of the tax credit under this Code section for a taxable
129 year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the
130 taxpayer against the succeeding five years' tax liability. No such credit shall be allowed
131 the taxpayer against prior years' tax liability.

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

134 (2) The commissioner shall allow the tax credits on a first come, first served basis.

135 (3) For the purposes of paragraph (1) of this subsection, the foundation shall notify a
136 potential donor of the requirements of this Code section. Before making a donation to
137 the foundation, the taxpayer shall electronically notify the department, in a manner
138 specified by the department, of the total amount of donations that the taxpayer intends to
139 make to the foundation. The commissioner shall preapprove or deny the requested
140 amount within 30 days after receiving the request from the taxpayer and shall provide
141 notice to the taxpayer and the foundation of such preapproval or denial which shall not
142 require any signed release or notarized approval by the taxpayer. In order to receive a tax
143 credit under this Code section, the taxpayer shall make the donation to the foundation
144 within 60 days after receiving notice from the department that the requested amount was
145 preapproved. If the taxpayer does not comply with this paragraph, the commissioner
146 shall not include this preapproved donation amount when calculating the limit prescribed
147 in paragraph (1) of this subsection. The department shall establish a web based donation
148 approval process to implement this subsection.

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

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

164 (h) No credit shall be allowed under this Code section with respect to any amount
165 deducted from taxable net income by the taxpayer as a charitable contribution to a bona
166 fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue
167 Code.

168 (i) The commissioner shall be authorized to promulgate any rules and regulations
169 necessary to implement and administer the tax provisions of this Code section."

170

SECTION 3.

171 (a) This Act shall become effective upon its approval by the Governor or upon its becoming
172 law without such approval and shall be applicable to all taxable years beginning on or after
173 January 1, 2018.

174 (b) This Act shall be automatically repealed December 31, 2020.

175

SECTION 4.

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