

House Bill 865

By: Representatives Dudgeon of the 25<sup>th</sup>, Stephens of the 164<sup>th</sup>, Stovall of the 74<sup>th</sup>, Belton of the 112<sup>th</sup>, Brockway of the 102<sup>nd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,  
2 relating to imposition, rate, computation, and exemptions from state income taxation, so as  
3 to provide an exemption for individual and corporate donors to student scholarship  
4 organizations; to amend Chapter 2A of Title 20 of the Official Code of Georgia Annotated,  
5 relating to student scholarship organizations, so as to create a new income tax exemption for  
6 student scholarship funding; to provide for individual and corporate donations to student  
7 scholarship organizations; to provide for procedures, conditions, and limitations; to provide  
8 for a short title; to provide for related matters; to provide for an effective date and  
9 applicability; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 This Act shall be known and may be cited as the "Building Educational Success Together  
13 (BEST) Act."

14 **SECTION 2.**

15 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to  
16 imposition, rate, computation, and exemptions from state income taxation, is amended by  
17 adding a new Code section to read as follows:

18 "48-7-29.16A.

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

20 (1) 'BEST' means Building Educational Success Together.

21 (2) 'BEST eligible student' shall have the same meaning as in paragraph (2) of Code  
22 Section 20-2A-15.

23 (3) 'BEST qualified school or program' shall have the same meaning as in paragraph (3)  
24 of Code Section 20-2A-15.

25 (4) 'BEST student scholarship donor' shall have the same meaning as in paragraph (4)  
26 of Code Section 20-2A-15.

27 (5) 'Student scholarship organization' shall have the same meaning as in paragraph (3)  
28 of Code Section 20-2A-1.

29 (b)(1) A BEST student scholarship corporate donor shall be allowed a credit against the  
30 tax imposed by this chapter for donations to a student scholarship organization in an  
31 amount not to exceed the actual amount expended or \$2.5 million, whichever is less.

32 (2) A BEST student scholarship individual donor shall be allowed a credit against the tax  
33 imposed by this chapter for donations to a student scholarship organization in the amount  
34 contained in subsection (b) of Code Section 48-7-29.16.

35 (c) The tax credit shall not be allowed if the BEST student scholarship donor designates  
36 the donation to be used for the direct benefit of any particular individual or school.

37 (d) If a tax credit approved under paragraph (3) of subsection (e) of this Code section is  
38 not fully used within the specified state fiscal year for credits, any unused tax credit shall  
39 be allowed the BEST student scholarship donor against the succeeding five years' tax  
40 liability. If a tax credit approved under paragraph (3) of subsection (e) of this Code section  
41 is not fully used because of insufficient tax liability on the part of the taxpayer, the unused  
42 amount may be carried forward for a period not to exceed five years. However, any  
43 taxpayer who seeks to carry forward an unused amount of tax credit must submit an  
44 application to the department for approval of the carryforward tax credit in the year that  
45 such taxpayer intends to use such carryforward tax credit. No such credit shall be allowed  
46 against prior years' tax liability.

47 (e)(1) In no event shall the aggregate amount of tax credits allowed under this Code  
48 section exceed \$25 million per tax year. No single BEST student scholarship donor shall  
49 be entitled to receive more than \$2.5 million in tax credits per tax year.

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

51 (3) Before making a contribution to a student scholarship organization, the BEST student  
52 scholarship donor shall electronically notify the department, in a manner specified by the  
53 department, of the total amount of contributions that such BEST student scholarship  
54 donor intends to make to such student scholarship organization. The commissioner shall  
55 preapprove or deny the requested amount within 30 days after receiving the request from  
56 the BEST student scholarship donor and shall provide notice to such BEST student  
57 scholarship donor and the student scholarship organization of such preapproval or denial  
58 which shall not require any signed release or notarized approval by such BEST student  
59 scholarship donor. In order to receive a tax credit under this Code section, the BEST  
60 student scholarship donor shall make the contribution to the student scholarship  
61 organization within 60 days after receiving notice from the department that the requested

62 amount was preapproved. The student scholarship organization shall report to the  
63 department the actual amount it received from the BEST student scholarship donor on the  
64 first business day of the month following receipt of the donation. If the BEST student  
65 scholarship donor does not comply with this paragraph, the commissioner shall not  
66 include the preapproved contribution amount when calculating the limit prescribed in  
67 paragraph (1) of this subsection. The department shall establish a web based donation  
68 approval process to implement this subsection.

69 (4) Preapproval of contributions by the commissioner shall be based solely on the  
70 availability of tax credits subject to the aggregate total limit established under paragraph  
71 (1) of this subsection. The commissioner shall issue rules and regulations as necessary  
72 to administer the program implemented in this Code section. Such rules and regulations  
73 shall ensure that individuals and corporations have equal access to the credits prescribed  
74 herein. The department shall maintain an ongoing, current list on its website of the  
75 amount of tax credits available under this Code section. The department shall publish  
76 figures based on actual contributions against the aggregate total limit established by this  
77 Code section. The amount of tax credits available shall be adjusted based on actual  
78 contributions, and student scholarship organizations shall be notified if additional tax  
79 credits become available.

80 (5) Notwithstanding any laws to the contrary, the department shall not take any adverse  
81 action against any BEST student scholarship donor if the commissioner preapproved a  
82 donation for a tax credit prior to the date the student scholarship organization is removed  
83 from the Department of Education list pursuant to Code Section 20-2A-7, and all such  
84 donations shall remain as preapproved tax credits subject only to the BEST student  
85 scholarship donor's compliance with paragraph (3) of this subsection.

86 (f) In order for the BEST student scholarship donor to claim the tax credit under this Code  
87 section, a letter of confirmation of donation issued by the student scholarship organization  
88 to which the contribution was made shall be attached to such BEST student scholarship  
89 donor's tax return. However, in the event the BEST student scholarship donor files an  
90 electronic return, such confirmation shall only be required to be electronically attached to  
91 the return if the Internal Revenue Service allows such attachments when the data is  
92 transmitted to the department. In the event the BEST student scholarship donor files an  
93 electronic return and such confirmation is not attached because the Internal Revenue  
94 Service does not at the time of such electronic filing allow electronic attachments to the  
95 Georgia return, such confirmation shall be maintained by the BEST student scholarship  
96 donor and made available upon request by the commissioner. The letter of confirmation  
97 of donation shall contain the donor's name, address, tax identification number, the amount  
98 of the contribution, the date of the contribution, and the amount of the tax credit.

99 (g) No tax credit shall be allowed under this Code section with respect to any amount  
 100 deducted from taxable net income by the BEST student scholarship donor as a charitable  
 101 contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the  
 102 Internal Revenue Code.

103 (h) All information or reports provided by student scholarship organizations to the  
 104 department shall be confidential taxpayer information, governed by Code Sections 48-2-15,  
 105 48-7-60, and 48-7-61, with respect to BEST student scholarship donor information.

106 (i) The amount of any scholarship received by a BEST eligible student shall be excluded  
 107 from taxable net income for state income tax purposes.

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

110 **SECTION 3.**

111 Chapter 2A of Title 20 of the Official Code of Georgia Annotated, relating to student  
 112 scholarship organizations, is amended by designating the existing Code sections as Article  
 113 1 and by adding a new article to read as follows:

114 "ARTICLE 2

115 20-2A-15.

116 As used in this article, the term:

117 (1) 'BEST' means Building Educational Success Together.

118 (2) 'BEST eligible student' means any student:

119 (A) Who is a Georgia resident and qualifies for a free or reduced lunch in Georgia  
 120 schools; and

121 (B) Who, immediately prior to receiving a scholarship or tuition grant under Code  
 122 Section 20-2A-2 and enrolling in a BEST qualified school or program, was enrolled in  
 123 and attended for at least six weeks a Georgia secondary or primary public school or  
 124 who is eligible to enroll in a qualified first grade or kindergarten program; provided,  
 125 however, that if a student is deemed a BEST eligible student pursuant to this paragraph,  
 126 he or she shall continue to qualify as such until he or she graduates, reaches the age of  
 127 20, or returns to a public school, whichever occurs first; and provided, further, that the  
 128 enrollment and six-week public school attendance requirements shall be waived in the  
 129 case of a student who, based on the school attendance zone of his or her primary  
 130 residence, is or would be assigned to a public school that the Office of Student  
 131 Achievement determines to be a failing school, who is the subject of officially  
 132 documented cases of school based physical violence or student related verbal abuse

133 threatening physical harm, who was enrolled in a home study program meeting the  
 134 requirements of subsection (c) of Code Section 20-2-690 for at least one year  
 135 immediately prior to receiving a scholarship or tuition grant under Code Section  
 136 20-2A-2, or who was already served by an existing student scholarship organization for  
 137 the 2016-2017 school year.

138 (3) 'BEST qualified school or program' means a school or program that:

139 (A) Annually administers nationally norm-referenced tests or the state tests that  
 140 measure learning gains and provide for value-added assessment to all participating  
 141 BEST students in grades that require testing under this state's accountability testing  
 142 laws for public schools;

143 (B) Provides the parents of each BEST student with a copy of the results of the tests  
 144 administered pursuant to subparagraph (A) of this paragraph on an annual basis  
 145 beginning with the first year of testing;

146 (C) Provides the test results of BEST students to the Office of Student Achievement  
 147 on an annual basis beginning with the first year of testing;

148 (D) Provides graduation rates of BEST students, when applicable, to the Office of  
 149 Student Achievement in a manner consistent with nationally recognized standards;

150 (E) Is accredited or in the process of becoming accredited by one or more entities listed  
 151 in subparagraph (A) of paragraph (6) of Code Section 20-3-519; and

152 (F) Is located in this state, adheres to the provisions of the federal Civil Rights Act of  
 153 1964, and satisfies the requirements prescribed by law for private schools in this state.

154 (4) 'BEST student scholarship donor' means a C or S corporation or an individual that  
 155 contributes to a student scholarship organization. Such term also includes members of  
 156 a limited liability company duly formed under state laws or a partner in a partnership.

157 (5) 'Failing school' means any school receiving less than a 69 on the College and Career  
 158 Ready Performance Index (CCRPI) compiled by the Department of Education.

159 (6) 'Student scholarship organization' shall have the same meaning as in paragraph (3)  
 160 of Code Section 20-2A-1. Such organizations shall provide educational scholarships or  
 161 tuition grants to eligible students without limiting availability to only students of one  
 162 school. In addition to the specific requirements for BEST eligible students and BEST  
 163 qualified schools or programs contained in this Code section and Code Section 20-2A-16,  
 164 student scholarship organizations receiving donations from a BEST student scholarship  
 165 donor shall adhere to all of the requirements in Article 1 of this chapter.

166 20-2A-16.

167 (a) Except for a reasonable amount of funds held as a reserve, each student scholarship  
168 organization shall transfer any funds received from a BEST student scholarship donor  
169 designated for scholarships or tuition grants to a BEST qualified school or program on  
170 behalf of a BEST eligible student within 24 months of receipt of such funds.

171 (b) Scholarships awarded by student scholarship organizations with funds received from  
172 a BEST student scholarship donor shall be portable to any BEST qualified school or  
173 program of the student's parent's or guardian's choice.

174 (c) The parent or guardian to whom a BEST scholarship is granted shall restrictively  
175 endorse such scholarship to the BEST qualified school or program for deposit into the  
176 account of the BEST qualified school or program. The parent or guardian may not  
177 designate any entity or individual associated with the participating BEST qualified school  
178 or program as such parent's or guardian's attorney in fact to endorse a scholarship. A  
179 parent or guardian who fails to comply with this Code section forfeits the BEST  
180 scholarship.

181 (d) In addition to the requirements in Code Section 48-7-29.16A, each student scholarship  
182 organization participating in the BEST student scholarship program shall annually submit  
183 notice to the Department of Education in accordance with department guidelines of its  
184 participation as a student scholarship organization under this article.

185 (e) Each student scholarship organization participating in the BEST student scholarship  
186 program shall annually submit to the Department of Education any BEST student  
187 information that would allow the state to aggregate data by grade level, gender, family  
188 income level, and race.

189 (f) The Department of Education shall maintain on its website a current list of all student  
190 scholarship organizations which have provided notice pursuant to subsection (d) of this  
191 Code section."

192 **SECTION 4.**

193 This Act shall become effective upon its approval by the Governor or upon its becoming law  
194 without such approval and shall be applicable to all taxable years beginning on or after  
195 January 1, 2017.

196 **SECTION 5.**

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