

The House Committee on Ways and Means offers the following substitute to HB 237:

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 style="text-align:center">**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 earning unacceptable ratings, as  
 56 determined by the office, and for the dissemination of information regarding successful  
 57 innovations to other public schools in this state. Funds received by the foundation for  
 58 such purpose may be awarded through a competitive grant process administered by the  
 59 office. The criteria for awarding such grants shall include the potential to which the  
 60 innovation is likely to result in the proposed improvement, the potential for widespread  
 61 adoption of such innovation by other public schools in the state, the quality of the

62 proposed project design, the reasonableness of the costs involved in conducting the  
 63 project, and such other criteria which the office may deem appropriate and necessary.  
 64 The foundation shall be authorized to withhold an amount necessary to cover the costs  
 65 incurred in administering the grant process.

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

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

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

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

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

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

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

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

92 **SECTION 2.**

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

95 "48-7-29.21.

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

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

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

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

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

107 (2) In the case of a married couple filing a joint return, the actual amount donated or  
 108 \$2,500.00 per tax year, whichever is less; or

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

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

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

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

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

130 (f)(1) In no event shall the aggregate amount of tax credits allowed under this Code  
 131 section exceed \$7 million per tax year; provided, however, that for taxable years  
 132 beginning on and after January 1, 2026, the aggregate amount of tax credits allowed  
 133 under this Code section shall not exceed \$10 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, 2033.

175

**SECTION 4.**

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