

Senate Bill 66

By: Senators Anavitarte of the 31st, Payne of the 54th, Mullis of the 53rd, Cowser of the 46th, Strickland of the 17th and others

AS PASSED SENATE

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 revenue and taxation, respectively, so as to authorize a nonprofit corporation
3 incorporated by the Georgia Foundation for Public Education to receive private donations
4 to be used for grants to public schools; to provide for the expiration of the Public Education
5 Innovation Fund Foundation's authority to promote public-private partnerships and to receive
6 private donations to be used for grants to public schools; to provide for grant criteria; to
7 provide for the dissolution of the Public Education Innovation Fund Foundation; to revise
8 definitions; to provide for an income tax credit for qualified education donations; to provide
9 for conditions and limitations; to provide for related matters; to repeal conflicting laws; and
10 for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended in
14 Article 1 of Chapter 2, relating to the State Board of Education, by revising Code Section
15 20-2-14.1, relating to the Georgia Foundation for Public Education, authorization to accept

S. B. 66

- 1 -

16 transfers of certain property held in trust by State Board of Education, authorization for
17 nonprofit corporation, and annual report, as follows:

18 "20-2-14.1.

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

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

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

27 (3) To accept transfer of any donation, gift, devise, or bequest of real, personal, or mixed
28 property of any kind and character held in trust by the State Board of Education to
29 manage and otherwise administer. This paragraph shall apply to any donation, gift,
30 devise, or bequest of real, personal, or mixed property of any kind and character held in
31 trust by the state board pursuant to Article VIII, Section II, Paragraph I(c) of the Georgia
32 Constitution, subsection (a) of Code Section 20-2-14, or Code Section 20-2-18;

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

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

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

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

39 (b) The Georgia Foundation for Public Education shall be attached to the department for
40 administrative purposes. The Attorney General shall be the attorney for the foundation.

41 The State School Superintendent may solicit and accept contributions from the foundation.

42 The department may cooperate and contract with the foundation for their mutual benefit

43 and authorize others to do so. Upon any dissolution of the foundation, its assets shall
44 devolve in trust to the State Board of Education or its successor for use only for the benefit
45 of the department, ~~and the schools listed in paragraph (2) of subsection (a) of this Code~~
46 ~~section, and schools that meet the criteria provided in subparagraph (g.1)(1) of this Code~~
47 section.

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

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

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

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

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

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

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

79 (f) The foundation shall be deemed to be a charitable organization for purposes of
80 voluntary contributions from state employees pursuant to Article 3 of Chapter 20 of Title
81 45.

82 (g)(1) The foundation shall have the power and authority to incorporate a nonprofit
83 corporation that could qualify as a public foundation under Section 501(c)(3) of the
84 Internal Revenue Code to aid the foundation in carrying out any of its powers and in
85 accomplishing any of its purposes. Any nonprofit corporation ~~created~~ incorporated
86 pursuant to this power shall be ~~created~~ incorporated pursuant to Chapter 3 of Title 14, the
87 'Georgia Nonprofit Corporation Code,' and the Secretary of State shall be authorized to
88 accept such filing.

89 (2) Any nonprofit corporation ~~created~~ incorporated pursuant to this Code section shall
90 be subject to the following provisions:

91 (H)(A) In accordance with the Constitution of Georgia, no governmental functions or
92 regulatory powers shall be conducted by any such nonprofit corporation;

93 (2)(B) Upon dissolution of any such nonprofit corporation incorporated by the
94 foundation, any assets shall revert to the foundation or to any successor to the
95 foundation or, failing such succession, to the State of Georgia;

96 ~~(3)~~(C) As used in this paragraph, the term 'direct employee costs' means salary,
97 benefits, and travel expenses. To avoid the appearance of undue influence on
98 regulatory functions by donors, no more than a combined total of 10 percent of
99 donations to any such nonprofit corporation from private sources, or from taxpayers
100 pursuant to Code Section 48-7-29.21, shall be used for direct employee costs of the
101 foundation;

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

104 ~~(5)~~(E) The foundation shall not be liable for the action or omission to act of any such
105 nonprofit corporation;

106 ~~(6)~~(F) No debts, bonds, notes, or other obligations incurred by any such nonprofit
107 corporation shall constitute an indebtedness or obligation of the State of Georgia nor
108 shall any act of any such nonprofit corporation constitute or result in the creation of an
109 indebtedness of the state. No holder or holders of any such bonds, notes, or other
110 obligations shall ever have the right to compel any exercise of the taxing power of the
111 state nor to enforce the payment thereof against the state; and

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

115 (g.1)(1) Effective January 1, 2022, a nonprofit corporation incorporated by the
116 foundation pursuant to this Code section shall be authorized to receive donations from
117 taxpayers pursuant to Code Section 48-7-29.21 for the purpose of awarding grants to
118 public schools for the implementation of academic and organizational innovations to
119 improve student achievement, with priority given to schools that have performed in the
120 lowest 5 percent of schools in this state identified in accordance with the state-wide
121 accountability system established in the state plan pursuant to the federal Every Student
122 Succeeds Act, and for the dissemination of information regarding successful innovations

123 to other public schools in this state. Funds received by the nonprofit corporation for such
124 purpose may be awarded through a competitive grant process administered by the
125 foundation. The criteria for awarding such grants shall include the potential to which the
126 innovation is likely to result in the proposed improvement, the potential for widespread
127 adoption of such innovation by other public schools in the state, the quality of the
128 proposed project design, the reasonableness of the costs involved in conducting the
129 project, and such other criteria which the foundation may deem appropriate and
130 necessary. The General Assembly may appropriate funds for purposes of this nonprofit
131 corporation beginning in Fiscal Year 2022.

132 (2) Such nonprofit corporation shall report to the Department of Revenue, on a form
133 provided by the Department of Revenue, by January 12 of each tax year the following:

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

137 (B) The total number and dollar value of corporate donations and tax credits approved;

138 (C) The total number and dollar value of grants awarded to public schools; and

139 (D) A list of donors, including the dollar value of each donation and the dollar value
140 of each approved tax credit.

141 The Department of Revenue shall post on its website the information received pursuant
142 to subparagraphs (A) through (C) of this paragraph.

143 (3) Except for the information reported pursuant to subparagraphs (A) through (C) of
144 paragraph (2) of this subsection, all information or reports provided by this nonprofit
145 corporation to the Department of Revenue shall be confidential taxpayer information,
146 governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether it relates to the donor
147 or the nonprofit corporation.

148 (h)(1) Members of the board of directors of the foundation may also serve on the board
149 of any nonprofit corporation ~~created~~ incorporated pursuant to this Code section without

150 regard to the prohibition set forth in Code Section 45-10-23 or any other similar
151 prohibition.

152 (2) Members and former members of the board of directors for the Public Education
153 Innovation Fund Foundation, incorporated pursuant to Code Section 20-14-26.1, may be
154 considered by the foundation for membership on the board of directors of the nonprofit
155 corporation provided for in subsection (g.1) of this Code section.

156 (i) Any nonprofit corporation ~~created~~ incorporated pursuant to this Code section shall
157 make and provide an annual report ~~showing the~~ that shall, except as otherwise provided in
158 subsection (g.1) of this Code section, show the identity of all donors and the amount each
159 person or entity donated as well as all expenditures or other disposal of money or property
160 donated. A copy of such annual report shall be provided to the Governor, the Lieutenant
161 Governor, and the chairpersons of the House Committee on Education and the Senate
162 Education and Youth Committee."

163 **SECTION 2.**

164 Said title is further amended in Part 2 of Article 2 of Chapter 14, relating to the Office of
165 Student Achievement, by revising Code Section 20-14-26.1, relating to authority to
166 incorporate nonprofit corporation as public foundation, requirements, Public Education
167 Innovation Fund Foundation, and reporting, as effective until December 31, 2023, as follows:

168 "(a) The office shall have the power and authority to incorporate a nonprofit corporation
169 that could qualify as a public foundation under Section 501(c)(3) of the Internal Revenue
170 Code to aid the office in carrying out any of its powers and in accomplishing any of its
171 purposes. Any nonprofit corporation ~~created~~ incorporated pursuant to this power shall be
172 ~~created~~ incorporated pursuant to Chapter 3 of Title 14, the 'Georgia Nonprofit Corporation
173 Code,' and the Secretary of State shall be authorized to accept such filing.

174 (b) Any nonprofit corporation ~~created~~ incorporated pursuant to this Code section shall be
175 subject to the following provisions:

- 176 (1) In accordance with the Constitution of Georgia, no governmental functions or
177 regulatory powers shall be conducted by any such nonprofit corporation;
- 178 (2) Except as provided in paragraph (3) of subsection (b.1) of this Code section, upon
179 ~~Upon~~ dissolution of any such nonprofit corporation incorporated by the office, any assets
180 shall revert to the office or to any successor to the office or, failing such succession, to
181 the State of Georgia;
- 182 (3) As used in this paragraph, the term 'direct employee costs' means salary, benefits, and
183 travel expenses. To avoid the appearance of undue influence on regulatory functions by
184 donors, no donations to any such nonprofit corporation from private sources shall be used
185 for direct employee costs of the office;
- 186 (4) Any such nonprofit corporation shall be subject to all laws relating to open meetings
187 and the inspection of public records;
- 188 (5) The office shall not be liable for the action or omission to act of any such nonprofit
189 corporation;
- 190 (6) No debts, bonds, notes, or other obligations incurred by any such nonprofit
191 corporation shall constitute an indebtedness or obligation of the State of Georgia nor shall
192 any act of any such nonprofit corporation constitute or result in the creation of an
193 indebtedness of the state. No holder or holders of any such bonds, notes, or other
194 obligations shall ever have the right to compel any exercise of the taxing power of the
195 state nor to enforce the payment thereof against the state; and
- 196 (7) Any nonprofit corporation ~~created~~ incorporated pursuant to this Code section shall
197 not acquire or hold a fee simple interest in real property by any method, including but not
198 limited to gift, purchase, condemnation, devise, court order, and exchange.
- 199 (b.1)(1) Pursuant to this Code section, the office may ~~establish~~ incorporate a nonprofit
200 corporation to be designated as the Public Education Innovation Fund Foundation to
201 promote ~~Public-Private Partnerships~~ public-private partnerships between businesses,
202 nonprofit organizations, institutions of higher education, local school systems, and public

203 schools, for the purpose of improving student achievement. Funds received by the
204 foundation may be awarded through a competitive grant process administered by the
205 office. The General Assembly may appropriate funds for purposes of this foundation
206 beginning in Fiscal Year 2015.

207 (2)(A) Such foundation shall also be authorized to receive donations from taxpayers
208 pursuant to Code Section 48-7-29.21 for the purpose of awarding grants to public
209 schools for the implementation of academic and organizational innovations to improve
210 student achievement, with priority given to schools that have performed in the lowest
211 5 percent of schools in this state identified in accordance with the state-wide
212 accountability system established in the state plan pursuant to the federal Every Student
213 Succeeds Act, and for the dissemination of information regarding successful
214 innovations to other public schools in this state. Funds received by the foundation for
215 such purpose may be awarded through a competitive grant process administered by the
216 office. The criteria for awarding such grants shall include the potential to which the
217 innovation is likely to result in the proposed improvement, the potential for widespread
218 adoption of such innovation by other public schools in the state, the quality of the
219 proposed project design, the reasonableness of the costs involved in conducting the
220 project, and such other criteria which the office may deem appropriate and necessary.
221 The foundation shall not be authorized to withhold any funds to cover costs incurred
222 in administering the grant process.

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

- 225 (i) The total number and dollar value of donations and tax credits approved.
226 Individual contributions shall include contributions made by those filing income tax
227 returns as a single individual or head of household and those filing joint returns;
- 228 (ii) The total number and dollar value of corporate donations and tax credits
229 approved;

230 (iii) The total number and dollar value of grants awarded to public schools; and
231 (iv) A list of donors, including the dollar value of each donation and the dollar value
232 of each approved tax credit.

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

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

240 (3) The rights and authority granted in paragraph (1) and subparagraph (A) of
241 paragraph (2) of this subsection shall expire at 12:00 Midnight on December 31, 2021.

242 (4) The office shall take appropriate lawful steps to accomplish the dissolution of the
243 foundation after December 31, 2021. Upon dissolution of the foundation, any assets
244 derived from the receipt of taxpayer donations pursuant to subparagraph (A) of paragraph
245 (2) of this subsection shall revert to the nonprofit corporation incorporated by the Georgia
246 Foundation for Public Education as provided for in subsection (g.1) of Code Section
247 20-2-14.1, or, failing such succession, to the State of Georgia.

248 (c) Any nonprofit corporation ~~created~~ incorporated pursuant to this Code section shall
249 make public and provide an annual report showing the identity of all donors and the
250 amount each person or entity donated as well as all expenditures or other disposal of money
251 or property donated, except as otherwise provided in paragraph (2) of subsection (b.1) of
252 this Code section. Such report shall be provided to the Governor, the Lieutenant Governor,
253 the Speaker of the House of Representatives, and the chairpersons of the House Committee
254 on Education and the Senate Education and Youth Committee. Any such nonprofit
255 corporation shall also provide such persons with a copy of all corporate filings with the
256 federal Internal Revenue Service."

257

SECTION 3.

258 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
259 amended by revising subsections (a), (d), (f), and (g) of Code Section 48-7-29.21, relating
260 to tax credits for qualified education donations, as follows:

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

262 (1) 'Qualified education donation' means a donation made by a taxpayer to the nonprofit
263 corporation incorporated by the Georgia Foundation for Public Education as provided for
264 in subsection (g.1) of Code Section 20-2-14.1 or, prior to January 1, 2022, to the Public
265 Education Innovation Fund Foundation for the purpose of awarding grants to public
266 schools in this state incorporated pursuant to paragraph (2) of subsection (b.1) of Code
267 Section 20-14-26.1 for the purpose of awarding grants to public schools in this state.

268 (2) 'Recipient' 'Public Education Innovation Fund Foundation' or 'foundation' means the
269 nonprofit corporation incorporated by the Georgia Foundation for Public Education as
270 provided for in subsection (g.1) of Code Section 20-2-14.1 or the foundation established
271 Public Education Innovation Fund Foundation incorporated pursuant to subsection (b.1)
272 of Code Section 20-14-26.1."

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

276 (2) In soliciting donations, the ~~foundation~~ recipient shall not represent that, in exchange
277 for donating to ~~the foundation~~ such recipient, the school a taxpayer's child or children
278 attend shall receive a grant pursuant to subsection (g.1) of Code Section 20-2-14.1 or
279 paragraph (2) of subsection (b.1) of Code Section 20-14-26.1."

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

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

283 (3) For the purposes of paragraph (1) of this subsection, the foundation recipient shall
284 notify a potential donor of the requirements of this Code section. Before making a
285 donation to the foundation recipient, the taxpayer shall electronically notify the
286 department, in a manner specified by the department, of the total amount of donations
287 that the taxpayer intends to make to the foundation recipient. The commissioner shall
288 preapprove or deny the requested amount within 30 days after receiving the request from
289 the taxpayer and shall provide notice to the taxpayer and the foundation recipient of such
290 preapproval or denial which shall not require any signed release or notarized approval by
291 the taxpayer. In order to receive a tax credit under this Code section, the taxpayer shall
292 make the donation to the foundation recipient within 60 days after receiving notice from
293 the department that the requested amount was preapproved. If the taxpayer does not
294 comply with this paragraph, the commissioner shall not include this preapproved
295 donation amount when calculating the limit prescribed in paragraph (1) of this subsection.
296 The department shall establish a web based donation approval process to implement this
297 subsection.

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

302 (g) In order for the taxpayer to claim a tax credit under this Code section, a confirmation
303 of receipt of donation issued by the foundation recipient shall be attached to the taxpayer's
304 income tax return. However, in the event the taxpayer files an electronic return, such
305 confirmation shall only be required to be electronically attached to the return if the Internal
306 Revenue Service allows such attachments when the return is transmitted to the department.
307 In the event the taxpayer files an electronic return and such confirmation is not attached
308 because the Internal Revenue Service does not, at the time of such electronic filing, allow
309 electronic attachments to the Georgia return, such confirmation shall be maintained by the

310 taxpayer and made available upon request by the commissioner. The confirmation of
311 receipt of donation shall contain the taxpayer's name, address, tax identification number,
312 the amount of the donation, the date of the donation, and the amount of the credit."

313

SECTION 4.

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