SENATE SUBSTITUTE TO HB 797:

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

To amend Title 20 of the Official Code of Georgia Annotated, relating to education, so as to repeal an article relating to the Georgia Charter Schools Commission; to provide for legislative findings and intent; to provide for definitions; to provide for the establishment of the State Charter Schools Commission; to provide for its membership, duties, and powers; to provide for requirements for state charter schools; to provide for information to parents; to provide for an annual report; to provide for financial responsibility; to provide for funding for state charter schools; to provide for rules and regulations; to revise provisions relating to funding for state chartered special schools; to provide for related matters; to provide for contingent effectiveness; to provide for automatic repeal under certain conditions; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by repealing Article 31A of Chapter 2, relating to the Georgia Charter Schools Commission, and enacting a new article to read as follows:

*ARTICLE 31A

20-2-2080.

(a) The General Assembly finds that:

(1) State charter schools can serve as a complement to the educational opportunities provided by local boards of education in the state's system of public education; and

(2) State charter schools do not supplant public schools operated by local boards of education but provide options to enhance public educational opportunities.

(b) It is the intent of the General Assembly that there be established a state-level commission under the authority of the State Board of Education whose primary focus is the
development and support of state charter schools in order to better meet the growing and
diverse needs of students in this state and to further ensure that state charter schools of the
highest academic quality are approved and supported throughout the state in an efficient
manner.

20-2-2081.

As used in this article, the term:

(1) 'Attendance zone' means all or a portion of a local school system, one or more local
school systems or portions thereof, or all local school systems in this state.

(2) 'Commission' means the State Charter Schools Commission established pursuant to
Code Section 20-2-2082.

(3) 'Department' means the state Department of Education.

(4) 'Governing board' means the governing board of the nonprofit organization which is
the charter petitioner for a state charter school and which is the same as the governing
board of the state charter school which is involved in school-level governance of the state
charter school.

(5) 'State charter school' means a school authorized by the commission pursuant to this
article whose creation is authorized as a special school pursuant to Article VIII, Section
V, Paragraph VII of the Constitution. A state charter school shall be a public school.
The definitions set forth in Code Section 20-2-2062 shall be applicable to this article.

20-2-2082.

(a) The State Charter Schools Commission is established as a state-level authorizing entity
working in collaboration with the Department of Education under the authority of the State
Board of Education. Start-up funds necessary to establish and operate the commission may
be received by the State Board of Education in addition to such other funds as may be
appropriated by the General Assembly. The department shall assist in securing federal and
other institutional grant funds to establish the commission.

(b) The commission shall be appointed by the State Board of Education and shall be
composed of a total of seven members and made up of three appointees recommended by
the Governor, two appointees recommended by the President of the Senate, and two
appointees recommended by the Speaker of the House of Representatives. The Governor,
the President of the Senate, and the Speaker of the House of Representatives shall each
recommend a list of no fewer than two nominees for each appointment to the commission.
The appointments shall be made as soon as feasible but no later than the first regular
meeting of the State Board of Education in February, 2013. Each member shall serve a
term of two years; provided, however, that, for the purpose of providing staggered terms,
of the initial appointments, three members shall be appointed to one-year terms and four
members shall be appointed to two-year terms as determined by the State Board of
Education. Thereafter, each appointee shall serve a two-year term unless the State Board
of Education, after review and upon recommendation by the initial recommending
authority, extends the appointment. If a vacancy occurs on the commission, it shall be
filled by the State Board of Education from a recommendation by the appropriate authority
according to the procedure set forth in this subsection. The members of the commission
shall annually vote to appoint a chairperson and a vice chairperson from among its
membership. Each member of the commission shall hold a bachelor's degree or higher, and
the commission should include a group of diverse individuals representative of Georgia's
school population, to the extent possible, with respect to race, sex, and geography who
have experience in finance, administration, law, and education.
(c) The commission is encouraged to convene its first meeting no later than March 1,
2013, and thereafter shall meet at least bimonthly at the call of the chairperson or upon the
request of four members of the commission. Four members of the commission shall
constitute a quorum.
(d) The commission shall determine the manner in which it reviews state charter school
petitions and may, in its discretion, use existing department personnel to conduct such
review.
(e) The members of the commission shall not be compensated for their services on the
commission but may be reimbursed for per diem and travel expenses in the same manner
as provided for in Code Section 45-7-21.
(f) No commission member shall solicit or accept any gift, favor, loan, contribution,
service, promise of future employment, or other thing of value based upon an
understanding that the gift, favor, loan, contribution, service, promise, or other thing of
value was given or offered for the purpose of influencing that commission member in the
discharge of his or her duties as a commission member.

20-2-2083.
(a) The commission shall have the power to:
   (1) Approve or deny petitions for state charter schools and renew, nonrenew, or
terminate state charter school petitions in accordance with rules and regulations
established pursuant to this article. At its discretion, the commission may preliminarily
approve a petition for a state charter school before the petitioner has secured space,
equipment, or personnel, if the petitioner indicates such preliminary approval is necessary
for it to raise working capital. The State Board of Education shall review and may
overrule the approval or renewal of a state charter school by the commission within 60
(b) The commission shall have the following duties:

(1) Review petitions for state charter schools and assist in the establishment of state charter schools throughout this state. The commission shall ensure that all charters for state charter schools are consistent with state education goals;

(2) Develop, promote, and disseminate best practices for state charter schools in order to ensure that high-quality schools are developed and encouraged. At a minimum, the best practices shall encourage the development and replication of academically and financially proven state charter school programs;

(3) Develop, promote, and require high standards of accountability for state charter schools. The commission shall ensure that each state charter school participates in the state's education accountability system. If a state charter school falls short of performance measures included in the approved charter, the commission shall report such shortcomings to the Department of Education;

(4) Monitor and annually review and evaluate the academic and financial performance, including revenues and expenditures, of state charter schools and hold the schools accountable for their performance pursuant to the charter and to the provisions of this article. The commission shall also review the citizenship and immigration status of each individual that works at a state charter school and aggregate the information by school on an annual basis. The commission's duties to monitor the state charter school shall not constitute the basis for a private cause of action;

(5) Direct state charter schools and persons seeking to establish state charter schools to sources of private funding and support;

(6) Actively seek, with the assistance of the department, supplemental revenue from federal grant funds, institutional grant funds, and philanthropic organizations. The commission may receive and expend gifts, grants, and donations of any kind from any public or private entity to carry out the purposes of this article;

(7) Review and recommend to the General Assembly any necessary revisions to statutory requirements regarding standards and accountability for state charter schools;

(8) Act as liaison for state charter schools in cooperating with local boards of education that may choose to allow state charter schools to utilize excess space within school facilities;

(9) Encourage collaboration with municipalities, counties, consolidated governments, universities or colleges of the board of regents, technical institutions of the Technical College System of Georgia, and regional educational service agencies;
(10) Meet the needs of state charter schools and local school systems by uniformly administering high-quality state charter schools, thereby removing administrative burdens from the local school systems;  
(11) Assist state charter schools in negotiating and contracting with local boards of education that choose to provide certain administrative or transportation services to the state charter schools on a contractual basis; and  
(12) Provide for annual training, as determined by the commission, for members of state charter school governing boards. The training shall include, but not be limited to, best practices on school governance, the constitutional and statutory requirements relating to public records and meetings, and the requirements of applicable statutes and rules and regulations.  
(c)(1) The commission shall establish rules and regulations requiring each state charter school to provide adequate notice of its enrollment procedures, including any provision for the use of a random selection process where all applicants have an equal chance of being admitted in the event that the number of applications to enroll in the school exceeds the capacity of the program, grade, or school.  
(2) The commission shall provide adequate notice to local boards of education and to the public regarding meetings to be held by the commission. Such notice shall include the charter petitions to be discussed and acted upon. Such notice shall be provided in accordance with Chapter 14 of Title 50, relating to open and public meetings.  
20-2-2084.  
(a) Petitions submitted to the commission shall be subject to rules and regulations established pursuant to this article.  
(b) The commission shall be authorized to approve a petition for a state charter school that meets the following requirements:  
(1) Has a state-wide attendance zone; or  
(2)(A) Has a defined attendance zone; and  
(B) Demonstrates that it has special characteristics, such as a special population, a special curriculum, or some other feature or features which enhance educational opportunities, which may include the demonstration of a need to enroll students across multiple communities or an alternative delivery system; provided, however, that the petitioner shall demonstrate a reasonable justification for any proposed special curriculum that has a narrow or limited focus.  
(c)(1) For petitions for state charter schools with a state-wide attendance zone, the petitioner shall submit such petition to the commission and concurrently to the local board of education in which the school is proposed to be located for information.
purposes; provided, however, that this shall not apply to a proposed state charter school which will solely provide virtual instruction.

(2) For petitions for state charter schools with a defined attendance zone, the petitioner shall concurrently submit such petition to the commission, to the local board of education in which the school is proposed to be located, and to each local school system from which the proposed school plans to enroll students. The commission shall not act on a petition unless the local board of education in which the school is proposed to be located denies the petition; provided, however, that such local board shall approve or deny the petition no later than 60 days after its submission, as required pursuant to subsection (b) of Code Section 20-2-2064, unless the petitioner requested an extension. Failure to approve or deny such petition by such local board, in violation of Code Section 20-2-2064, shall be deemed a denial for purposes of this paragraph. A local board that has denied a petition for a state charter school shall be permitted to present to the commission in writing or in person the reasons for denial and the deficiencies in such petition resulting in such denial. (3) The commission may take into consideration any support or opposition by the local board of education or local boards of education on the start-up charter school petition when it votes to approve or deny a corresponding state charter school petition.

(d) A state charter school shall:

(1) Seek highly qualified, properly trained teachers and other qualified personnel for such schools; provided, however, that such schools shall give preference to hiring an individual who is a citizen or national of the United States over another individual who is not a citizen or national of the United States if the two individuals are equally qualified, unless a teacher is a foreign exchange teacher; provided, however, that prior to hiring an individual other than a citizen or national of the United States or a protected individual as defined in 8 U.S.C. Section 1324b, the school shall receive approval by the commission and demonstrate that qualified teachers and other personnel were sought but not available in such area which warrants hiring an individual other than a citizen or national of the United States or a protected individual as defined in 8 U.S.C. Section 1324b, unless a teacher is a foreign exchange teacher; provided, further, that the commission and the state charter school shall not construe this paragraph in a manner in violation of 8 U.S.C. Section 1324b or other provisions of law; and

(2) Give preference in contracting and purchasing of services and materials to businesses incorporated under the laws of this state or qualified to do business within this state and having a regularly maintained and established place of business within this state, so long as such businesses are otherwise similarly situated and qualified as compared to a business from out of state.
(e)(1) The members of the governing board for the state charter school shall meet the following qualifications:

(A) Must be a United States citizen;

(B) Must be a resident of Georgia; and

(C) Must not be an employee of the state charter school.

(2) No member of the governing board of the state charter school shall:

(A) Act in his or her official capacity in any matter where he or she, his or her immediate family member, or a business organization in which he or she has an interest has a material financial interest that would reasonably be expected to impair his or her objectivity or independence of judgment;

(B) Solicit or accept or knowingly allow his or her immediate family member or a business organization in which he or she has an interest to solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing that board member in the discharge of his or her duties as a board member;

(C) Use, or knowingly allow to be used, his or her position or any information not generally available to the members of the public which he or she receives or acquires in the course of and by reason of his or her position for the purpose of securing financial gain for himself or herself, his or her immediate family member, or any business organization with which he or she is associated; or

(D) Be an officer or serve on the board of directors of any organization that sells goods or services to that state charter school.

As used in this paragraph, the term 'immediate family member' means a spouse, child, sibling, or parent or the spouse of a child, sibling, or parent.

(f) The members of the governing board of each state charter school shall participate in annual training conducted by the commission pursuant to paragraph (12) of subsection (b) of Code Section 20-2-2083.

(g) An individual that works at a state charter school or an individual that has administrative oversight at a state charter school shall not serve on the board of directors of an organization that sells goods or services to such state charter school.

A petition may be submitted pursuant to this Code section by an existing charter school approved by a local board of education or the State Board of Education provided that the obligations of its charter with the local board of education or State Board of Education will expire prior to entering into a new charter with the commission. Upon the existing charter
school's request, a local board of education or the State Board of Education in the case of a state chartered special school may agree to rescind or waive the obligations of a current charter to allow a petition to be submitted by an existing charter school pursuant to this Code section. An existing charter school that is established as a state charter school pursuant to this Code section shall be allowed to continue the use of all facilities, equipment, and other assets it used prior to the expiration or rescission of its charter with a local board of education; provided, however, that the local board shall be authorized to charge or continue to charge a reasonable fee for use of the facilities.

20-2-2086.
The commission shall provide maximum access to information regarding state charter schools to all parents in this state. It shall maintain information systems, including, but not limited to, a user-friendly Internet website, that will provide information and data necessary for parents to make informed decisions. At a minimum, the commission shall provide parents with information on its accountability standards, links to state charter schools throughout this state, and public education programs concerning state charter schools.

20-2-2087.
Each year, the chairperson of the commission shall appear before the State Board of Education and submit a report regarding the academic performance and fiscal responsibility of all state charter schools approved under this article.

20-2-2088.
If a charter for a state charter school is not renewed or is terminated, the state charter school shall be responsible for all debts of such school. Neither the state, the State Board of Education, or the commission shall be liable for any debts of the school in the event the charter is not renewed or is terminated. The local school system may not assume the debt from any contract for services made between the governing body of the state charter school and a third party, except for a debt for which the local school system has agreed upon in writing to assume responsibility.

20-2-2089.
(a)(1) The earnings for a student in a state charter school shall be equal to the earnings for any other student with similar student characteristics in a state charter school, regardless of the local school system in which the student resides or the school system in which the state charter school is located, and, except as otherwise provided in
paragraph (2) of this subsection, the department shall pay to each state charter school
through appropriation of state funds an amount equal to the sum of:

(A)(i) QBE formula earnings and QBE grants earned by the state charter school
based on the school's enrollment, school profile, and student characteristics. For
purposes of this subparagraph, the term 'QBE formula earnings' means funds earned
for the Quality Basic Education Formula pursuant to Code Section 20-2-161,
including the portion of such funds that are calculated in accordance with Code
Section 20-2-164. QBE formula earnings shall include the salary portion of direct
instructional costs, the adjustment for training and experience, the nonsalary portion
of direct instructional costs, and earnings for psychologists and school social workers,
school administration, facility maintenance and operation, media centers, additional
days of instruction in accordance with Code Section 20-2-184.1, and staff
development, as determined by the department.
(ii) A proportional share of earned state categorical grants, non-QBE state grants,
transportation grants, school nutrition grants, and all other state grants, except state
equalization grants, as determined by the department;
(B) The average amount of the total revenues less federal revenues less state revenues
other than equalization grants per full-time equivalent for the lowest five school
systems ranked by assessed valuation per weighted full-time equivalent count, as
determined by the department; and
(C) The state-wide average total capital revenue per full-time equivalent, as determined
by the department.

(2) In the event that a state charter school offers virtual instruction:

(A) The amount of funds received pursuant to subparagraph (B) of paragraph (1) of
this subsection shall be equal to two-thirds of such calculated amount; provided,
however, that this two-thirds amount may be increased by any amount up to the
originally calculated amount in the discretion of the commission if relevant factors
warrant such increase; and
(B) The commission may reduce the amount of funds received pursuant to
subparagraph (C) of paragraph (1) of this subsection in proportion to the amount of
virtual instruction provided and based on factors that affect the cost of providing
instruction.

(3) For purposes of this subsection, the terms:

(A) 'Assessed valuation' is defined as 40 percent of the equalized adjusted property tax
digest reduced by the amount calculated pursuant to subsection (g) of Code Section
20-2-164.
(B) 'Assessed valuation per weighted full-time equivalent count' is defined as the assessed valuation for the most recent year available divided by the weighted full-time equivalent count for the year of the digest.

(b) The department may withhold up to 3 percent of the amount determined pursuant to subsection (a) of this Code section for each state charter school for use in administering the duties required pursuant to Code Section 20-2-2083; provided, however, that any amount withheld pursuant to this subsection shall be spent solely on expenses incurred by the commission in performing the duties required by this article.

(c) No deduction shall be made to any state funding which a local school system is otherwise authorized to receive pursuant to this chapter as a direct result or consequence of the enrollment in a state charter school of a specific student or students who reside in the geographical area of the local school system.

(d) For purposes of funding students enrolled in a state charter school in the first year of such school's operation or for the first year that an existing state charter school offers a new grade level and prior to the initial student count, the commission shall calculate and the department shall distribute the funding for the state charter school on the basis of its projected enrollment according to an enrollment counting procedure or projection method stipulated in the terms of the charter. No later than July 1 of each year, the commission shall notify the department and the Office of Planning and Budget of the funding estimates calculated pursuant to this subsection for any new state charter schools and for any new grade levels offered by existing state charter schools. After the initial student count during the first year of such state charter school's operation or newly offered grade level and in all years of operation thereafter, each state charter school's student enrollment shall be based on the actual enrollment in the current school year according to the most recent student count. Nothing in this Code section shall be construed to require the department to conduct more than two student counts per year.

(e) Funding for state charter schools pursuant to this Code section shall be subject to appropriations by the General Assembly and such schools shall be treated consistently with all other public schools in this state, pursuant to the respective statutory funding formulas and grants.

20-2-2090.
The commission shall work in collaboration with the department on all matters related to authorizing state charter schools and shall be assigned to the department for administrative purposes only, as prescribed in Code Section 50-4-3. For administrative purposes, including data reporting, student enrollment counting procedures, student achievement reporting, funding allocations, and related purposes as defined by the State Board of
Education, each state charter school shall, consistent with department rules and regulations, be treated as a single local education agency.

20-2-2091. The commission and the State Board of Education, as appropriate, shall adopt rules and regulations necessary to facilitate the implementation of this article. Except as otherwise provided in this article, any rules and regulations adopted by the State Board of Education pursuant to this article, to the extent practicable, shall be established in the same manner and subject to the same requirements as for state chartered special schools under Article 31 of this chapter.

SECTION 2A.
Said title is further amended by revising subsection (d) of Code Section 20-2-2068.1, relating to funding for charter schools, as follows:

"(d)(1) QBE formula earnings, applicable QBE grants, applicable non-QBE state grants, and applicable federal grants that are earned by a state chartered special school shall be distributed to the local board of the local school system in which the state chartered special school is located which shall distribute the same amount to the state chartered special school; provided, however, that a state chartered special school shall not be included in the calculation and distribution of the local school system's equalization grant unless the voters of the local school system have approved the use of revenue from local tax levies and funds from local bonded indebtedness to support the state chartered special school in accordance with subsection (c) of this Code section. If such approval has been given, state equalization grant earnings shall be earned for the state chartered special school and shall be distributed as provided in subsection (f) of this Code section. Effective July 1, 2012, except as otherwise provided in paragraph (2) of this subsection, the department shall pay to each state chartered special school through appropriation of state funds an amount equal to the sum of:

(A)(i) QBE formula earnings and QBE grants earned by the state chartered special school based on the school's enrollment, school profile, and student characteristics. For purposes of this subparagraph, the term 'QBE formula earnings' means funds earned for the Quality Basic Education Formula pursuant to Code Section 20-2-161, including the portion of such funds that are calculated in accordance with Code Section 20-2-164. QBE formula earnings shall include the salary portion of direct instructional costs, the adjustment for training and experience, the nonsalary portion of direct instructional costs, and earnings for psychologists and school social workers, school administration, facility maintenance and operation, media centers, additional
days of instruction in accordance with Code Section 20-2-184.1, and staff
development, as determined by the department.

(ii) A proportional share of earned state categorical grants, non-QBE state grants,
transportation grants, school nutrition grants, and all other state grants, except state
equalization grants, as determined by the department;

(B) The average amount of the total revenues less federal revenues less state revenues
other than equalization grants per full-time equivalent for the lowest five school
systems ranked by assessed valuation per weighted full-time equivalent count, as
determined by the department; and

(C) The state-wide average total capital revenue per full-time equivalent, as determined
by the department.

(2) In the event that a state chartered special school offers virtual instruction:

(A) The amount of funds received pursuant to subparagraph (B) of paragraph (1) of
this subsection shall be equal to two-thirds of such calculated amount; provided,
however, that this two-thirds amount may be increased by any amount up to the
originally calculated amount in the discretion of the department if relevant factors
warrant such increase; and

(B) The department may reduce the amount of funds received pursuant to subparagraph
(C) of paragraph (1) of this subsection in proportion to the amount of virtual instruction
provided and based on factors that affect the cost of providing instruction.

(3) For purposes of this subsection, the terms:

(A) 'Assessed valuation' is defined as 40 percent of the equalized adjusted property tax
digest reduced by the amount calculated pursuant to subsection (g) of Code Section
20-2-164.

(B) 'Assessed valuation per weighted full-time equivalent count' is defined as the
assessed valuation for the most recent year available divided by the weighted full-time
equivalent count for the year of the digest.

(4) The department may withhold up to 3 percent of the amount determined pursuant to
paragraphs (1) and (2) of this subsection for each state chartered special school for use
in administering the duties required pursuant to this article with respect to state chartered
special schools; provided, however, that any amount withheld pursuant to this subsection
shall be spent solely on expenses incurred by the department in performing the duties
required by this article with respect to state chartered special schools.

(5) No deduction shall be made to any state funding which a local school system is
otherwise authorized to receive pursuant to this chapter as a direct result or consequence
of the enrollment in a state chartered special school of a specific student or students who
reside in the geographical area of the local school system.
(6) Funding for state chartered special schools pursuant to this subsection shall be subject to appropriations by the General Assembly and such schools shall be treated consistently with all other public schools in this state, pursuant to the respective statutory funding formulas and grants.

(7) The local board shall not be responsible for the fiscal management, accounting, or oversight of the state chartered special school. The state chartered special school shall report enrolled students in a manner consistent with Code Section 20-2-160. Any data required to be reported by the state chartered special school shall be submitted directly by the school to the appropriate state agency. Where feasible, the state board shall treat a state chartered special school no less favorably than other public schools within the state with respect to the provision of funds for transportation and building programs."

SECTION 3.

(a)(1) Section 1 of this Act shall become effective on January 1, 2013, only if a Constitutional amendment expressly authorizing the General Assembly to create state charter schools as special schools is ratified at the November, 2012, general election.

(2) If such an amendment to the Constitution is not so ratified, then Section 1 of this Act shall not become effective and shall stand repealed by operation of law on January 1, 2013.

(b) All other sections of this Act shall become effective on July 1, 2012.

SECTION 4.

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