



Senate

General Assembly

File No. 381

February Session, 2016

Substitute Senate Bill No. 333

Senate, March 31, 2016

The Committee on Higher Education and Employment Advancement reported through SEN. BARTOLOMEO of the 13th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE FOUNDATION OF CONSTITUENT UNITS
AND PUBLIC INSTITUTIONS OF HIGHER EDUCATION.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4-37f of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2017*):

3 The executive authority of each state agency for which a foundation
4 is established shall, in accordance with a policy adopted by the board
5 of trustees of the constituent unit for each state agency which is a
6 constituent unit or which is a public institution of higher education
7 under the jurisdiction of the constituent unit, ensure that, or the
8 executive authority of each state agency for which a foundation is
9 established for the principal purpose of coordinated emergency
10 recovery shall ensure that:

11 (1) The foundation shall have a governing board to oversee its
12 operation;

13 (2) If the state agency is a constituent unit, the following persons
14 shall serve as nonvoting members of the governing board of the
15 foundation unless the bylaws of the foundation provide that they be
16 voting members: The executive authority of the constituent unit, or his
17 designee, a student enrolled at an institution under the jurisdiction of
18 the constituent unit, who shall be elected by the students enrolled at
19 the institutions under the jurisdiction of the constituent unit, and a
20 member of the faculty of any such institution, who shall be elected by
21 the faculty of the institutions under the jurisdiction of the constituent
22 unit. Elections pursuant to this subdivision shall be conducted in
23 accordance with procedures for such elections established by the board
24 of trustees of the constituent unit;

25 (3) If the constituent unit is the [Board of Trustees of the
26 Community-Technical Colleges or the Board of Trustees of] regional
27 community-technical colleges or the Connecticut State University
28 System, the purposes of the foundation shall be limited to providing
29 funding for (A) scholarships or other direct student financial aid, and
30 (B) programs, services or activities at one or more of the institutions
31 within its jurisdiction;

32 (4) If the state agency is a public institution of higher education, the
33 following persons shall serve as nonvoting members of the governing
34 board of the foundation unless the bylaws of the foundation provide
35 that they be voting members: The executive authority of the
36 institution, or his designee, a student enrolled at the institution, who
37 shall be elected by the students enrolled in the institution and a
38 member of the faculty of the institution, who shall be elected by the
39 faculty of the institution. Elections pursuant to this subdivision shall be
40 conducted in accordance with procedures for such elections
41 established by the board of trustees of the constituent unit which has
42 jurisdiction over the institution;

43 (5) The governing board of the foundation shall annually file with
44 the state agency an updated list of the members and officers of such
45 board;

46 (6) The salaries, benefits and expenses of officers and employees of
47 the foundation shall be paid solely by the foundation;

48 (7) The foundation shall use generally accepted accounting
49 principles in its financial record-keeping and reporting and shall not
50 engage in any prohibited act, as described under section 21a-190h of
51 the Solicitation of Charitable Funds Act;

52 (8) A foundation which has in any of its fiscal years receipts and
53 earnings from investments totaling one hundred thousand dollars per
54 year or more, or a foundation established for the principal purpose of
55 coordinated emergency recovery that operated in response to an
56 eligible incident, as defined in section 4-37r, during the fiscal year or
57 with funds that exceeded one hundred thousand dollars in the
58 aggregate, shall have completed on its behalf for such fiscal year a full
59 audit of the books and accounts of the foundation. A foundation which
60 has receipts and earnings from investments totaling less than one
61 hundred thousand dollars in each fiscal year during any three of its
62 consecutive fiscal years beginning October 1, 1986, shall have
63 completed on its behalf for the third fiscal year in any such three-year
64 period a full audit of the books and accounts of the foundation, unless
65 such foundation was established for the principal purpose of
66 coordinated emergency recovery and had completed on its behalf such
67 an audit for any year in any such three-year period. For each fiscal year
68 in which an audit is not required pursuant to this subdivision financial
69 statements shall be provided by the foundation to the executive
70 authority of the state agency. Each audit under this subdivision shall
71 be conducted (A) by an independent certified public accountant or, if
72 requested by the state agency with the consent of the foundation, the
73 Auditors of Public Accounts, and (B) in accordance with generally
74 accepted auditing standards. [The audit report shall include financial
75 statements, a management letter and an audit opinion which address
76 the] The auditor shall submit (i) a report that includes an opinion
77 regarding the financial statements and a management letter, and (ii) a
78 report that includes an opinion on conformance of the operating
79 procedures of the foundation with the provisions of sections 4-37e to 4-

80 37i, inclusive, and [recommend] recommendations for any corrective
81 actions needed to ensure such conformance. Each audit report shall
82 disclose the receipt or use by the foundation of any public funds in
83 violation of said sections or any other provision of the general statutes.
84 The foundation shall provide a copy of each audit report completed
85 pursuant to this subdivision to the executive authority of the state
86 agency and the Attorney General. Each financial statement required
87 under this subdivision shall include, for the fiscal year to which the
88 statement applies, the total receipts and earnings from investments of
89 the foundation and the amount and purpose of each receipt of funds
90 by the state agency from the foundation. As used in this subdivision,
91 "fiscal year" means any twelve-month period adopted by a foundation
92 as its accounting year;

93 (9) If the state agency is a constituent unit or public institution of
94 higher education and the foundation has an endowment fund with a
95 market value that is greater than one million five hundred thousand
96 dollars, the foundation shall annually provide the following, in
97 accordance with the provisions of section 11-4a, to the joint standing
98 committee of the General Assembly having cognizance of matters
99 relating to higher education, the speaker of the House of
100 Representatives, the president pro tempore of the Senate, the majority
101 leader of the House of Representatives, the majority leader of the
102 Senate, the minority leader of the House of Representatives and the
103 minority leader of the Senate: (A) A list of the current members and
104 officers of the governing board of the foundation; (B) a copy of the
105 most recent annual report of the foundation; (C) a copy of the most
106 recent audited financial statements, management letter and audit
107 reports of the foundation that are required under subdivision (8) of
108 this section; (D) a copy of the written agreement between the state
109 agency and the foundation that is required under subdivision (10) of
110 this section; (E) a copy of the written policy required under section 4-
111 37j; (F) a copy of any conflicts of interest policy of the foundation; (G) a
112 copy of the foundation's most recently filed Internal Revenue Service
113 form 990, including all parts and schedules that are required to be
114 made available for public inspection under the Internal Revenue Code

115 of 1986, or any subsequent corresponding internal revenue code of the
116 United States, as amended from time to time; (H) a copy of the bylaws
117 of the foundation; (I) a report of the total number and average size of
118 disbursements made to each public institution of higher education for
119 (i) undergraduate and graduate scholarships, fellowships and awards,
120 (ii) program and research support, (iii) equipment, and (iv) facilities
121 construction, improvements and related expenses; (J) as to any
122 employee of the public institution of higher education for whom the
123 foundation contributes some or all of the salary, wages or fringe
124 benefit expenses, a report listing the position of each such employee
125 and, for each position, the amount of the financial reimbursement by
126 the foundation to the public institutions of higher education for such
127 employee's salary, wages or fringe benefit expenses; (K) the identity of
128 any person, firm, corporation or other entity donating funds or other
129 things of value to the foundation, unless the donor has requested that
130 such donor's identity not be publicly disclosed; and (L) a list of all
131 deanships, professorships, chairs, schools, institutes, centers or
132 facilities of the state agency that were named in recognition of
133 foundation donors upon the approval of the board of trustees of the
134 state agency during the preceding fiscal year. The information
135 delivered under this subdivision shall constitute a public record and
136 shall be disclosed in accordance with the Freedom of Information Act,
137 as defined in section 1-200;

138 [(9)] (10) There shall be a written agreement between the state
139 agency and the foundation [which] that (A) addresses any use by the
140 foundation of the agency's facilities and resources including, but not
141 limited to, office space, storage space, office furniture and equipment,
142 utilities, photocopying services, computer systems and the
143 maintenance by the state agency of the books and records of the
144 foundation, provided any such books and records maintained by the
145 state agency shall not be deemed to be public records and shall not be
146 subject to disclosure pursuant to the provisions of section 1-210, (B)
147 provides that the state agency shall have no liability for the
148 obligations, acts or omissions of the foundation, (C) requires the
149 foundation to reimburse the state agency for expenses the agency

150 incurs as a result of foundation operations, if the agency would not
151 have otherwise incurred such expenses, (D) in the case of foundations
152 established for a constituent unit of the state system of higher
153 education or for a public institution of higher education, requires the
154 foundation to establish and adhere to an investment policy and a
155 spending policy that are consistent with sections 45a-535 to 45a-535i,
156 inclusive, [and] (E) on and after July 1, 2017, if the state agency is a
157 constituent unit or a public institution of higher education, provides
158 that (i) the total cash compensation to be paid in a fiscal year by the
159 state agency to the foundation shall decrease from the amount paid in
160 the preceding fiscal year or the amount paid in the fiscal year ending
161 June 30, 2016, whichever is greater, by (I) one million dollars when the
162 market value of the foundation's endowment fund as of January first
163 of the preceding fiscal year is equal to or greater than five hundred
164 million dollars but less than seven hundred million dollars, (II) one
165 million five hundred thousand dollars when the market value of such
166 fund as of January first of the preceding fiscal year is equal to or
167 greater than seven hundred million dollars but less than nine hundred
168 million dollars, or (III) three million dollars when the market value of
169 such fund as of January first of the preceding fiscal year is equal to or
170 greater than nine hundred million dollars but less than one billion two
171 hundred fifty million dollars, (ii) no cash compensation shall be paid
172 by the state agency to the foundation when the amount in such
173 foundation's endowment fund as of January first of the preceding
174 fiscal year is equal to or greater than one billion two hundred fifty
175 million dollars, and (iii) if the market value of the foundation's
176 endowment fund as of January first of the preceding fiscal year
177 decreases below any of the thresholds stated in subclause (I), (II) or
178 (III) of clause (i) of this subparagraph, then the amount of the cash
179 payment to the foundation shall be increased to equal the same
180 amount that was paid to the foundation prior to exceeding the
181 threshold in subclause (I), (II) or (III) of clause (i) of this subparagraph,
182 until the July first following a January first on which the market value
183 of the foundation's endowment fund again exceeds such threshold, (F)
184 on and after July 1, 2017, requires the foundation to use reasonable

185 efforts to raise gifts and commitments each fiscal year for student
 186 support, including, but not limited to, scholarships, assistantships,
 187 fellowships, awards and prizes, that equal not less than fifteen per cent
 188 of the total amount of all gifts and commitments raised by the
 189 foundation in the same fiscal year, and (G) provides that if the
 190 foundation ceases to exist or ceases to be a foundation, as defined in
 191 section 4-37e, (i) the foundation shall be prohibited from using the
 192 name of the state agency, (ii) the records of the foundation, or copies of
 193 such records, shall be made available to and may be retained by the
 194 state agency, provided any such records or copies which are retained
 195 by the state agency shall not be deemed to be public records and shall
 196 not be subject to disclosure pursuant to the provisions of section 1-210,
 197 and (iii) there are procedures for the disposition of the financial and
 198 other assets of the foundation. If the state agency is a constituent unit,
 199 the board of trustees of the constituent unit shall approve such
 200 agreement. If the state agency is a public institution of higher
 201 education, the board of trustees of the constituent unit which has
 202 jurisdiction over the institution shall approve such agreement; and

203 [(10)] (11) If the foundation is established for the principal purpose
 204 of coordinated emergency recovery, the Department of Emergency
 205 Services and Public Protection shall be deemed the state agency for
 206 purposes of this section, and the deputy commissioner of said
 207 department with jurisdiction over the Division of Emergency
 208 Management and Homeland Security shall be deemed the executive
 209 authority for purposes of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2017	4-37f

Statement of Legislative Commissioners:

In Section 1(9)(C), "opinion" was changed to "reports" for consistency with other provisions of the section.

HED *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill results in no fiscal impact to the state as foundations established to support constituent units of higher education (i.e., institutionally related foundations) are not state entities.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sSB 333*****AN ACT CONCERNING THE FOUNDATION OF CONSTITUENT UNITS AND PUBLIC INSTITUTIONS OF HIGHER EDUCATION.*****SUMMARY:**

This bill adds several requirements for foundations established to support constituent units (i.e., institutionally related foundations). Existing law defines the following institutions as constituent units: UConn, the public universities that make up the Connecticut State University System, the regional community-technical colleges, and Charter Oak State College.

Specifically, the bill requires institutionally related foundations to do the following:

1. refrain from engaging in any prohibited acts listed under the state Solicitation of Charitable Funds Act;
2. submit two annual reports, rather than one, containing additional fiscal auditor opinions as part of their fiscal year auditing process to both the executive authority of the constituent units they support and the Attorney General;
3. provide informational filings annually to the Higher Education and Employment Advancement Committee and legislative leaders if the foundation has an endowment fund with a market value exceeding \$1.5 million per year; and
4. add two provisions to the contracts between them and the constituent units they support.

The bill also makes several technical and conforming changes.

EFFECTIVE DATE: July 1, 2017

NEW REQUIREMENTS FOR INSTITUTIONALLY RELATED FOUNDATIONS

Solicitation of Charitable Funds Act Compliance

The bill prohibits institutionally related foundations from engaging in any prohibited act listed in the Solicitation of Charitable Funds Act (see BACKGROUND). This state law (1) regulates organizations, activities, and professions related to charitable giving and (2) prohibits individuals and charities from performing specified acts related to charities. (Presumably, prohibitions applicable to both individuals and charities under the act apply to such foundations under the bill.)

Fiscal Year Audits

The bill requires institutionally related foundations to submit two reports, rather than one, containing additional fiscal auditor opinions as part of their fiscal year auditing process to the constituent units they support and the Attorney General. By law, such foundations must undergo fiscal year audits either (1) annually if their fiscal year receipts and investment earnings total \$100,000 or more per fiscal year or (2) every three fiscal years if their receipts and investment earnings total less than \$100,000 per fiscal year. Table 1 below compares the fiscal audit reporting requirements under current law and the bill.

Table 1: Foundation Audit Report Requirements under Current Law and sSB 333

	<i>Current law (CGS § 4-37f(8))</i>	<i>sSB 333</i>	
Number of required reports	One	Two	
Required report content	Financial statements Management letter Audit opinion on conformance of foundation operating procedures to state law Recommendations for corrective actions needed to ensure such conformance	Report one: Audit opinion on financial statements Management letter	Report two: Audit opinion on conformance of foundation operating procedures to state law Recommendations for corrective

			actions needed to ensure such conformance
Total number of audit opinions	One	Two	

Annual General Assembly Filings

The bill requires institutionally related foundations with endowment funds exceeding \$1.5 million to annually provide to the Higher Education Committee and all six legislative leaders a copy of each of the following items:

1. the most recent annual foundation report;
2. the most recent audited financial statements, management letter, and audit opinions of the foundation required by law;
3. the written agreement required by law between the constituent unit and foundation;
4. the written policy required by law on investigation of ethical and legal violations and whistle-blowing;
5. any conflicts of interest policy of the foundation;
6. the foundation's most recently filed IRS form 990, including all parts and schedules required by federal law to be available for public inspection; and
7. the foundation's bylaws.

Such foundations must also provide to the committee and leaders:

1. a list of the current members and officers of the foundation's governing board;
2. a list of all deanships, professorships, chairs, schools, institutes, centers, or facilities of the constituent unit that were named in

recognition of foundation donors upon the constituent unit's board of trustees' approval during the previous fiscal year; and

3. the identity of any person, firm, corporation, or other entity donating funds or other things of value to the foundation unless the donor has requested that his or her identity not be publicly disclosed.

Additionally, institutionally related foundations must annually meet two reporting requirements for the committee and legislative leaders. First, they must give the total number and average size of foundation disbursements made to each public higher education institution for (1) undergraduate and graduate scholarships, fellowships, and awards; (2) program and research support; (3) equipment; and (4) facilities construction, improvements, and related expenses.

Second, they must list the position of each employee of the public higher education institutions for whom the foundation contributes all or some of the salary, wages, or fringe benefit expenses. For each position, the report must provide the financial reimbursement amount from the foundation for such expenses.

Under the bill, all of the above information reported by institutionally related foundations to the legislative committee and leadership is considered a public record under the state's Freedom of Information Act.

Required Contract Provisions

By law, each institutionally related foundation must enter a written agreement with a constituent unit or public higher education institution that governs their relationship. The bill requires such agreements to include two additional provisions beginning July 1, 2017.

The first new provision governs the cash compensation paid by the constituent unit to the foundation. The bill requires the agreement to

contain three statements governing this compensation:

1. Cash compensation paid by the constituent unit to the foundation in a fiscal year must decrease from either the amount paid in the preceding fiscal year or the fiscal year ending June 30, 2016, whichever is greater, and must decrease by (a) \$1 million when the market value of the foundation's endowment fund is \$500 to \$700 million as of January 1 of the preceding fiscal year, (b) \$1.5 million when the market value of the fund is \$700 to \$900 million as of January 1 of the preceding fiscal year, or (c) \$3 million when the market value of the fund is \$900 million to \$1.25 billion as of January 1 of the preceding fiscal year.
2. The constituent unit may not pay the foundation any cash compensation when the endowment fund is \$1.25 billion or more as of January first of the preceding fiscal year.
3. If the foundation's endowment fund market value decreases below any of the above thresholds as of January 1 of the preceding fiscal year, then the constituent unit must increase the cash compensation it pays to the foundation to the same amount that was paid prior to when the threshold was exceeded, until the July 1 following January 1 on which the market value of the endowment fund once again exceeds the threshold.

The second new provision requires the foundation, on and after July 1, 2017, to use reasonable efforts to raise gifts and commitments each fiscal year for student support, including scholarships, assistantships, fellowships, awards, and prizes. Such gifts and commitments must equal at least 15% of the total amount of all gifts and commitments raised by the foundation in the same fiscal year.

BACKGROUND

Prohibited Acts under the Solicitation of Charitable Funds Act

Under the act, it is against the law for any individual to do the

following:

1. misrepresent (a) a solicitation's purpose or beneficiary, (b) a charity's purpose or nature, or (c) that any other person sponsors or endorses a solicitation;
2. use or exploit the charity's registration with the Connecticut Department of Consumer Protection to make the public believe that the registration is a state endorsement or approval;
3. use the charity's name or display its emblem, device, or printed matter without its express written permission;
4. make any false or misleading statement on any document required by this law;
5. fail to comply with this law's requirements; or
6. appropriate a charity's property for private use.

It is also unlawful for any person conducting a charity's affairs to engage in any financial transaction unrelated to accomplishing its charitable purpose.

Additionally, it is unlawful under the act for any charity to do the following:

1. engage in any financial transaction unrelated to accomplishing its charitable purpose,
2. expend an unreasonable amount of money for solicitation or management,
3. use a name which is the same as or confusingly similar to another charity's name unless the latter charity provides written consent to do so,
4. represent itself as being associated with another charity without its express written acknowledgement or endorsement, or

5. use an unregistered fund-raising counsel's or paid solicitor's services.

It is also unlawful for a fund-raising counsel or paid solicitor to perform services for an unregistered charity (CGS § 21a-190h).

COMMITTEE ACTION

Higher Education and Employment Advancement Committee

Joint Favorable Substitute

Yea 19 Nay 0 (03/15/2016)