

By Mr. Rosenberg, a petition (accompanied by bill, Senate, No. 263) of Stanley C. Rosenberg, Ellen Story and Christopher J. Hodgkins for legislation relative to public higher education foundations. Education, Arts and Humanities.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Four

AN ACT AMENDING LEGISLATION CONCERNING PUBLIC HIGHER EDUCATION FOUNDATIONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 37 of chapter 15A of the General Laws, as appearing in
2 the 1992 Official Edition, is hereby amended by striking out said
3 section and inserting in place thereof the following section: —

4 Section 37. (a) As used in this section, the following words
5 shall have the following meanings:

6 "Foundation", an organization which is (a) a Massachusetts
7 corporation within the meaning of clause (c) of section two of
8 chapter one hundred eighty, and subject to the provisions of said
9 chapter one hundred eighty, except as herein provided; (b) orga-
10 nized and operated exclusively for the benefit of an institution of
11 public higher education; and (c) certified by the board of trustees
12 of the institution which it supports to be operating in a manner
13 consistent with the goals and policies of the institution. Any cor-
14 poration which is not so certified or whose certification has been
15 revoked by the board of trustees of the institution which it sup-
16 ports shall not use the name of said corporation either in such cor-
17 poration's name or for fundraising, and such corporation shall not
18 otherwise be subject to the provisions of this section.

19 "Institution", a public college or university in Massachusetts.

20 (b) Each foundation shall have a governing board to oversee its
21 operation. The president of the institution or his designee, two

22 members of the board of trustees of the institution, and a faculty
23 member elected by the faculty of the institution pursuant to elec-
24 tion procedures approved by the board of trustees of the institu-
25 tion shall be members of the governing board of the foundation. In
26 no event shall institutional trustees and employees constitute one-
27 half or more of the voting members of such foundation's govern-
28 ing board. The governing board of each foundation shall annually
29 file a list of the members and officers of such board with the insti-
30 tution's board of trustees and with the higher education coordinat-
31 ing council.

32 (c) The board of trustees of an institution which it supports is
33 authorized to permit the use without compensation of facilities
34 and personnel services of the institution by the foundation; pro-
35 vided, however, that in no event shall any employee of the institu-
36 tion spend more than twenty-five percent of his work hours
37 engaged in services for a foundation.

38 (d) All gifts from a foundation to an institution shall be
39 approved for acceptance by the board of trustees, in accordance
40 with applicable institutional policies. Any person soliciting funds
41 or any other thing of value on behalf of a foundation from a per-
42 son, firm, corporation or other entity shall at the time of the solici-
43 tation clearly and conspicuously disclose to the potential donor
44 that the donations are to be provided to the foundation and not to
45 an institution, and that the donor may request in writing that the
46 donor's identity not be publicly disclosed.

47 (e) Each foundation shall provide an annual report of its finan-
48 cial accounts prepared in accordance with accepted accounting
49 principles to the board of trustees of the institution which it sup-
50 ports and to the higher education coordinating council. The board
51 of trustees and the council may require any supplemental data rel-
52 ative to the operations of the foundation. The identity of donors
53 who wish to remain anonymous shall be protected, and anonymity
54 of such donors shall be maintained in all audit reports. The annual
55 financial report when received by a board of trustees or the higher
56 education coordinating council shall be considered a public record
57 as defined in clause twenty-sixth of section seven of chapter four.

58 (f) The state auditor shall have the authority, upon request by
59 the institution, the higher education coordinating council, or upon
60 his own initiative, to audit transfers to or expenditures from foun-

61 dation accounts of public funds; use of employees paid with pub-
62 lic funds to staff the foundation; and the existence of contracts or
63 agreements between a foundation and an institution.

64 (g) A foundation certified by an institution's board of trustees
65 under the provisions of this section shall not be deemed to be an
66 agency, board, bureau, department, division, commission, authori-
67 ty or other subdivision of the commonwealth. Members of the
68 governing board of a foundation who are not already state
69 employees shall not be considered to be state employees for the
70 purposes of chapter two hundred and sixty-eight A and two hun-
71 dred and sixty-eight B.

