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FY 2018 New York State Executive Budget, Article 128 – Relating to
Institutionally-Affiliated Foundations
Letter of Concern
Richard D. Legon

President, Association of Governing Boards of Universities and Colleges

On behalf of the Association of Governing Boards of Universities and Colleges (AGB), I respectfully submit this letter in reference to Article 128 included in Governor Cuomo's FY 2018 New York State Executive Budget which could cause potential harm to the affiliated foundations of New York public colleges and universities. This amendment imposes new reporting requirements, provides open access to foundation records, and requires compliance with state open meetings law.

Established in 1921, AGB's mission is to educate the governing bodies of some 2000 institutions. We work with institution and state system leadership and their board members, providing education and counsel to over 40,000 leaders across higher education. AGB has helped to shape best practices in institution and board governance with a primary focus on institution mission and achievement. AGB's board of directors, most of whom are college and university board members, is committed to advancing policies that strengthen and improve governance and leadership.

AGB has long recognized the public need for transparency and accountability for institutionally-related foundations and has consistently examined the work of foundation boards to define best practices in foundation governance, including those in areas such as conflict of interest, gift acceptance, and investment management.

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In 2016, AGB's Board of Directors issued a [Statement on Institution-Foundation Partnerships](#) that prescribes effective working relations between universities and their affiliated foundations. The statement observes:

To maintain public trust, the foundation should voluntarily embrace the highest standards of transparency commensurate with the protection of donors' privacy, the foundation's business-critical information, and the best interests of the institution. Among the benefits of partnering with affiliated foundations is their ability, as private entities, to perform functions that would be impossible, impractical, or less efficient if undertaken by a public institution. The foundation's status as a private corporation should never, however, be exploited as a means of concealing activities or transactions in violation of the spirit of open government laws.

We are concerned that the provisions being discussed in Albany go too far and may have unintended consequences, resulting in inadvertent damage to the foundations and their ability to raise and manage private dollars on behalf of their institutions. The amendments could potentially force foundations to disclose donor information and require sensitive financial discussions to be held in public meetings. One must recognize that affiliated foundations are private organizations, created under state public charity and federal tax laws and subject to state laws and Internal Revenue Service regulations, such as annual submission of IRS form 990.

Although not uniform across the nation, affiliated foundations have significant degrees of independence from their host college or university. As AGB's [2016 Statement](#) notes, this independence has ensured "exemption from state freedom of information laws, open meeting requirements, and other regulations applicable to state entities. There are compelling arguments that foundations should be able to safeguard the research and data required for fundraising and the sensitive information associated with investment decisions, real estate projects, and other entrepreneurial ventures. They must also be able to provide donors with the assurance that personal information will be kept confidential."

Requiring foundations to comply with state open meeting and records laws could do long-term harm to the foundation and their parent institutions. In light of the important contributions the affiliated foundations in New York State make to the missions and work of their universities and colleges, we urge the legislature to move very cautiously regarding requiring foundation compliance with state open meetings and open records.

I am available to answer any questions related to this letter. Please do not hesitate to contact me at rlegon@agb.org or 703-505-6916.

Respectfully submitted,



Richard D. Legon
President, AGB