



General Assembly

February Session, 2014

Raised Bill No. 5127

LCO No. 1027



Referred to Committee on GOVERNMENT ADMINISTRATION
AND ELECTIONS

Introduced by:
(GAE)

***AN ACT DEFINING THE UCONN FOUNDATION AS A PUBLIC
AGENCY FOR PURPOSES OF THE FREEDOM OF INFORMATION
ACT AND REQUIRING AUDITING OF THE FOUNDATION BY THE
AUDITORS OF PUBLIC ACCOUNTS.***

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

1 Section 1. (NEW) (*Effective October 1, 2014*) Notwithstanding the
2 provisions of sections 4-37f to 4-37k, inclusive, of the general statutes,
3 any foundation as defined in section 4-37e of the general statutes, as
4 amended by this act, that is established for The University of
5 Connecticut (1) shall be considered a public agency as defined in
6 section 1-200 of the general statutes for purposes of the Freedom of
7 Information Act, as defined in section 1-200 of the general statutes, and
8 (2) shall be subject to audit by the Auditors of Public Accounts in
9 accordance with the provisions of section 2-90 of the general statutes.

10 Sec. 2. Section 4-37e of the 2014 supplement to the general statutes is
11 repealed and the following is substituted in lieu thereof (*Effective*
12 *October 1, 2014*):

13 As used in this section and sections 4-37f to 4-37j, inclusive, as
14 amended by this act:

15 (1) "State agency" means each state board, authority, commission,
16 department, office, institution, council or other agency of the state
17 including, but not limited to, each constituent unit and each public
18 institution of higher education.

19 (2) "Foundation" means an organization, fund or any other legal
20 entity which is (A) exempt from taxation pursuant to Section 501(c)(3)
21 of the Internal Revenue Code of 1986, or any subsequent
22 corresponding internal revenue code of the United States, as from time
23 to time amended, and (B) established for the principal purpose of
24 receiving or using private funds for charitable, scientific, cultural,
25 educational or related purposes that support or improve a state agency
26 or for coordinated emergency recovery purposes. [Such] Except as
27 provided in section 1 of this act, such an organization, fund or other
28 legal entity shall not be deemed to be a state agency or a public agency,
29 as defined in section 1-200.

30 (3) "Executive authority" means (A) a department head, as defined
31 in section 4-5, (B) the executive secretary or president of a constituent
32 unit, (C) the chief executive officer of a public institution of higher
33 education, and (D) the chief executive officer of any other state agency.

34 (4) "Constituent unit" means a constituent unit as defined in section
35 10a-1.

36 (5) "Public institution of higher education" means a public college or
37 university in the state system of higher education or The University of
38 Connecticut School of Law.

39 (6) "Coordinated emergency recovery" means the support and
40 improvement of state services affected by a natural disaster, act of
41 domestic terrorism, catastrophic event or other unforeseen emergency,
42 including, but not limited to, services provided by the Department of

43 Emergency Services and Public Protection and the Office of Victim
44 Services.

45 Sec. 3. Section 4-37f of the 2014 supplement to the general statutes is
46 repealed and the following is substituted in lieu thereof (*Effective*
47 *October 1, 2014*):

48 The executive authority of each state agency for which a foundation
49 is established shall, in accordance with a policy adopted by the board
50 of trustees of the constituent unit for each state agency which is a
51 constituent unit or which is a public institution of higher education
52 under the jurisdiction of the constituent unit, ensure that, or the
53 executive authority of each state agency for which a foundation is
54 established for the principal purpose of coordinated emergency
55 recovery shall ensure that:

56 (1) The foundation shall have a governing board to oversee its
57 operation;

58 (2) If the state agency is a constituent unit, the following persons
59 shall serve as nonvoting members of the governing board of the
60 foundation unless the bylaws of the foundation provide that they be
61 voting members: The executive authority of the constituent unit, or his
62 designee, a student enrolled at an institution under the jurisdiction of
63 the constituent unit, who shall be elected by the students enrolled at
64 the institutions under the jurisdiction of the constituent unit, and a
65 member of the faculty of any such institution, who shall be elected by
66 the faculty of the institutions under the jurisdiction of the constituent
67 unit. Elections pursuant to this subdivision shall be conducted in
68 accordance with procedures for such elections established by the board
69 of trustees of the constituent unit;

70 (3) If the constituent unit is the Board of Trustees of the
71 Community-Technical Colleges or the Board of Trustees of the
72 Connecticut State University System, the purposes of the foundation
73 shall be limited to providing funding for (A) scholarships or other

74 direct student financial aid, and (B) programs, services or activities at
75 one or more of the institutions within its jurisdiction;

76 (4) If the state agency is a public institution of higher education, the
77 following persons shall serve as nonvoting members of the governing
78 board of the foundation unless the bylaws of the foundation provide
79 that they be voting members: The executive authority of the
80 institution, or his designee, a student enrolled at the institution, who
81 shall be elected by the students enrolled in the institution and a
82 member of the faculty of the institution, who shall be elected by the
83 faculty of the institution. Elections pursuant to this subdivision shall be
84 conducted in accordance with procedures for such elections
85 established by the board of trustees of the constituent unit which has
86 jurisdiction over the institution;

87 (5) The governing board of the foundation shall annually file with
88 the state agency an updated list of the members and officers of such
89 board;

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

92 (7) The foundation shall use generally accepted accounting
93 principles in its financial record-keeping and reporting;

94 (8) A foundation which has in any of its fiscal years receipts and
95 earnings from investments totaling one hundred thousand dollars per
96 year or more, or a foundation established for the principal purpose of
97 coordinated emergency recovery that operated in response to an
98 eligible incident, as defined in section 4-37r, during the fiscal year or
99 with funds that exceeded one hundred thousand dollars in the
100 aggregate, shall have completed on its behalf for such fiscal year a full
101 audit of the books and accounts of the foundation. A foundation which
102 has receipts and earnings from investments totaling less than one
103 hundred thousand dollars in each fiscal year during any three of its
104 consecutive fiscal years beginning October 1, 1986, shall have

105 completed on its behalf for the third fiscal year in any such three-year
106 period a full audit of the books and accounts of the foundation, unless
107 such foundation was established for the principal purpose of
108 coordinated emergency recovery and had completed on its behalf such
109 an audit for any year in any such three-year period. For each fiscal year
110 in which an audit is not required pursuant to this subdivision financial
111 statements shall be provided by the foundation to the executive
112 authority of the state agency. Each audit under this subdivision of a
113 foundation established for The University of Connecticut shall be
114 conducted by the Auditors of Public Accounts in accordance with
115 generally accepted auditing standards. Each audit under this
116 subdivision of a foundation established for any other state agency shall
117 be conducted (A) by an independent certified public accountant or, if
118 requested by the state agency with the consent of the foundation, by
119 the Auditors of Public Accounts, and (B) in accordance with generally
120 accepted auditing standards. The audit report shall include financial
121 statements, a management letter and an audit opinion which address
122 the conformance of the operating procedures of the foundation with
123 the provisions of sections 4-37e to 4-37i, inclusive, as amended by this
124 act, and recommend any corrective actions needed to ensure such
125 conformance. Each audit report shall disclose the receipt or use by the
126 foundation of any public funds in violation of said sections or any
127 other provision of the general statutes. The foundation shall provide a
128 copy of each audit report completed pursuant to this subdivision to the
129 executive authority of the state agency and the Attorney General. Each
130 financial statement required under this subdivision shall include, for
131 the fiscal year to which the statement applies, the total receipts and
132 earnings from investments of the foundation and the amount and
133 purpose of each receipt of funds by the state agency from the
134 foundation. As used in this subdivision, "fiscal year" means any
135 twelve-month period adopted by a foundation as its accounting year;

136 (9) There shall be a written agreement between the state agency and
137 the foundation which (A) addresses any use by the foundation of the

138 agency's facilities and resources including, but not limited to, office
139 space, storage space, office furniture and equipment, utilities,
140 photocopying services, computer systems and the maintenance by the
141 state agency of the books and records of the foundation, provided any
142 such books and records maintained by the state agency shall not be
143 deemed to be public records and shall not be subject to disclosure
144 pursuant to the provisions of section 1-210, except any such books and
145 records maintained by The University of Connecticut shall be subject
146 to disclosure pursuant to the provisions of section 1-210, (B) provides
147 that the state agency shall have no liability for the obligations, acts or
148 omissions of the foundation, (C) requires the foundation to reimburse
149 the state agency for expenses the agency incurs as a result of
150 foundation operations, if the agency would not have otherwise
151 incurred such expenses, (D) in the case of foundations established for a
152 constituent unit of the state system of higher education or for a public
153 institution of higher education, requires the foundation to establish
154 and adhere to an investment policy and a spending policy that are
155 consistent with sections 45a-535 to 45a-535i, inclusive, and (E) provides
156 that if the foundation ceases to exist or ceases to be a foundation, as
157 defined in section 4-37e, as amended by this act, (i) the foundation
158 shall be prohibited from using the name of the state agency, (ii) the
159 records of the foundation, or copies of such records, shall be made
160 available to and may be retained by the state agency, provided any
161 such records or copies which are retained by [the] a state agency other
162 than The University of Connecticut shall not be deemed to be public
163 records and shall not be subject to disclosure pursuant to the
164 provisions of section 1-210, and (iii) there are procedures for the
165 disposition of the financial and other assets of the foundation. If the
166 state agency is a constituent unit, the board of trustees of the
167 constituent unit shall approve such agreement. If the state agency is a
168 public institution of higher education, the board of trustees of the
169 constituent unit which has jurisdiction over the institution shall
170 approve such agreement; and

171 (10) If the foundation is established for the principal purpose of
172 coordinated emergency recovery, the Department of Emergency
173 Services and Public Protection shall be deemed the state agency for
174 purposes of this section, and the deputy commissioner of said
175 department with jurisdiction over the Division of Emergency
176 Management and Homeland Security shall be deemed the executive
177 authority for purposes of this section.

178 Sec. 4. Section 4-37k of the general statutes is repealed and the
179 following is substituted in lieu thereof (*Effective October 1, 2014*):

180 Notwithstanding any other provision of the general statutes, an
181 agreement between a state agency and a foundation, as defined in
182 section 4-37e, as amended by this act, shall not be deemed to be a
183 contract for the performance of a governmental function within the
184 meaning of section 1-218 unless such contract is between The
185 University of Connecticut and such a foundation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	New section
Sec. 2	<i>October 1, 2014</i>	4-37e
Sec. 3	<i>October 1, 2014</i>	4-37f
Sec. 4	<i>October 1, 2014</i>	4-37k

Statement of Purpose:

To subject the UConn Foundation to the provisions of the Freedom of Information Act and to auditing by the Auditors of Public Accounts.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]