



General Assembly

January Session, 2015

Raised Bill No. 6813

LCO No. 3668



Referred to Committee on HIGHER EDUCATION AND
EMPLOYMENT ADVANCEMENT

Introduced by:
(HED)

***AN ACT REQUIRING TRANSPARENCY OF EXPENDITURES BY THE
HIGHER EDUCATION FOUNDATIONS.***

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

1 Section 1. (NEW) (*Effective October 1, 2015*) Notwithstanding the
2 provisions of sections 4-37f to 4-37k, inclusive, of the general statutes,
3 as amended by this act, any foundation that is or has been established
4 for a constituent unit or a public institution of higher education shall
5 be considered a public agency, as defined in section 1-200 of the
6 general statutes, for purposes of the Freedom of Information Act, as
7 defined in section 1-200 of the general statutes.

8 Sec. 2. Section 4-37e of the general statutes is repealed and the
9 following is substituted in lieu thereof (*Effective October 1, 2015*):

10 As used in this section, [and] sections 4-37f to [4-37j] 4-37k,
11 inclusive, as amended by this act, and section 1 of this act:

12 (1) "State agency" means each state board, authority, commission,
13 department, office, institution, council or other agency of the state

14 including, but not limited to, each constituent unit and each public
15 institution of higher education.

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

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

31 (4) "Constituent unit" means a constituent unit as defined in section
32 10a-1.

33 (5) "Public institution of higher education" [means a public college
34 or university in the state system of higher education or The University
35 of Connecticut School of Law] has the same meaning as provided in
36 section 10a-173.

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

43 Sec. 3. Section 4-37f of the general statutes is repealed and the

44 following is substituted in lieu thereof (*Effective October 1, 2015*):

45 (a) The executive authority of each state agency for which a
46 foundation is established shall [, in accordance with a policy adopted
47 by the board of trustees of the constituent unit for each state agency
48 which is a constituent unit or which is a public institution of higher
49 education under the jurisdiction of the constituent unit, ensure that, or
50 the executive authority of each state agency for which a foundation is
51 established for the principal purpose of coordinated emergency
52 recovery shall] ensure that the following requirements are complied
53 with:

54 (1) The foundation shall have a governing board to oversee its
55 operation;

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

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

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

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

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

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

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

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

132 (9) There shall be a written agreement between the state agency and
133 the foundation which (A) addresses any use by the foundation of the
134 agency's facilities and resources including, but not limited to, office
135 space, storage space, office furniture and equipment, utilities,
136 photocopying services, computer systems and the maintenance by the
137 state agency of the books and records of the foundation, provided any
138 such books and records maintained by the state agency shall not be

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

169 (10) If the foundation is established for the principal purpose of
170 coordinated emergency recovery, the Department of Emergency
171 Services and Public Protection shall be deemed the state agency for

172 purposes of this section, and the deputy commissioner of said
173 department with jurisdiction over the Division of Emergency
174 Management and Homeland Security shall be deemed the executive
175 authority for purposes of this section.

176 (b) In the case of a foundation established for a constituent unit or a
177 public institution of higher education, the board of trustees of the
178 constituent unit or public institution of higher education shall adopt a
179 policy to implement the provisions of subsection (b) of this section.

180 Sec. 4. Section 4-37k of the general statutes is repealed and the
181 following is substituted in lieu thereof (*Effective October 1, 2015*):

182 Notwithstanding any other provision of the general statutes, an
183 agreement between a state agency and a foundation, as defined in
184 section 4-37e, as amended by this act, shall not be deemed to be a
185 contract for the performance of a governmental function within the
186 meaning of section 1-218 unless such contract is between a constituent
187 unit or public institution of higher education and such a foundation.

188 Sec. 5. Subsection (b) of section 1-210 of the general statutes is
189 amended by adding subdivision (28) as follows (*Effective October 1,*
190 *2015*):

191 (NEW) (28) Records containing personally identifiable information
192 of a contributor or prospective contributor of a bona fide and lawful
193 charitable contribution to any foundation, as defined in section 4-37e,
194 as amended by this act, that is or has been established for a constituent
195 unit, as defined in section 10a-1, or a public institution of higher
196 education, as defined in section 10a-173.

197 Sec. 6. Section 4-37h of the general statutes is repealed and the
198 following is substituted in lieu thereof (*Effective October 1, 2015*):

199 Any person soliciting funds or any other thing of value for donation
200 to a foundation by a person, firm, corporation or other entity shall, at

201 the time of such solicitation or in any receipt for or other written
202 confirmation of such donation, clearly and conspicuously disclose to
203 the person, firm, corporation or other entity that (1) the funds or other
204 things of value donated are to be provided to the foundation, and
205 [that] (2) the person, firm, corporation or other entity may request in
206 writing that its identity be confidential, and upon such request, the
207 identity of the person, firm, corporation or other entity shall not be
208 publicly disclosed, except in the case of a donation to a foundation
209 established for a constituent unit or public institution of higher
210 education, the personally identifiable information of a contributor or
211 prospective contributor shall be exempt from disclosure pursuant to
212 subdivision (28) of subsection (b) of section 1-210, as amended by this
213 act, without the need for such a request.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2015</i>	New section
Sec. 2	<i>October 1, 2015</i>	4-37e
Sec. 3	<i>October 1, 2015</i>	4-37f
Sec. 4	<i>October 1, 2015</i>	4-37k
Sec. 5	<i>October 1, 2015</i>	1-210(b)
Sec. 6	<i>October 1, 2015</i>	4-37h

Statement of Purpose:

To require transparency of expenditures by foundations established for a public institution of higher education.

[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.]