



General Assembly

**Amendment**

January Session, 2015

LCO No. 7296



Offered by:  
SEN. FASANO, 34<sup>th</sup> Dist.

To: Subst. Senate Bill No. 636

File No. 551

Cal. No. 321

**"AN ACT CONCERNING AFFIRMATIVE CONSENT."**

1 After the last section, add the following and renumber sections and  
2 internal references accordingly:

3 "Sec. 501. (NEW) (*Effective October 1, 2015*) Notwithstanding the  
4 provisions of sections 4-37f to 4-37k, inclusive, of the general statutes,  
5 as amended by this act, any foundation that is or has been established  
6 for The University of Connecticut shall be considered a public agency,  
7 as defined in section 1-200 of the general statutes, for purposes of the  
8 Freedom of Information Act, as defined in section 1-200 of the general  
9 statutes.

10 Sec. 502. Section 4-37e of the general statutes is repealed and the  
11 following is substituted in lieu thereof (*Effective October 1, 2015*):

12 As used in this section, [and] sections 4-37f to [4-37j] 4-37k,  
13 inclusive, as amended by this act, and section 501 of this act:

14 (1) "State agency" means each state board, authority, commission,

15 department, office, institution, council or other agency of the state  
16 including, but not limited to, each constituent unit and each public  
17 institution of higher education.

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

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

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

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

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. 503. Section 4-37f of the general statutes is repealed and the

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

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

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] regional  
72 community-technical colleges, the Connecticut State University System  
73 or The University of Connecticut, the purposes of the foundation shall  
74 be limited to providing funding for (A) scholarships or other direct  
75 student financial aid, and (B) programs, services or activities at one or  
76 more of the institutions within its jurisdiction;

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

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

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

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

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

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

134 (9) There shall be a written agreement between the state agency and  
135 the foundation which (A) addresses any use by the foundation of the  
136 agency's facilities and resources including, but not limited to, office  
137 space, storage space, office furniture and equipment, utilities,  
138 photocopying services, computer systems and the maintenance by the  
139 state agency of the books and records of the foundation, provided any  
140 such books and records maintained by the state agency shall not be  
141 deemed to be public records and shall not be subject to disclosure  
142 pursuant to the provisions of section 1-210, as amended by this act,

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

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

177 Management and Homeland Security shall be deemed the executive  
178 authority for purposes of this section.

179 (b) In the case of a foundation established for The University of  
180 Connecticut, the Board of Trustees for The University of Connecticut  
181 shall adopt a policy to implement the provisions of subsection (b) of  
182 this section.

183 Sec. 504. Section 4-37k of the general statutes is repealed and the  
184 following is substituted in lieu thereof (*Effective October 1, 2015*):

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

191 Sec. 505. Subsection (b) of section 1-210 of the general statutes is  
192 amended by adding subdivision (28) as follows (*Effective October 1,*  
193 *2015*):

194 (NEW) (28) Records containing personally identifiable information  
195 of a contributor or prospective contributor of a bona fide and lawful  
196 charitable contribution to any foundation, as defined in section 4-37e,  
197 as amended by this act, that is or has been established for The  
198 University of Connecticut.

199 Sec. 506. Section 4-37h of the general statutes is repealed and the  
200 following is substituted in lieu thereof (*Effective October 1, 2015*):

201 Any person soliciting funds or any other thing of value for donation  
202 to a foundation by a person, firm, corporation or other entity shall, at  
203 the time of such solicitation or in any receipt for or other written  
204 confirmation of such donation, clearly and conspicuously disclose to  
205 the person, firm, corporation or other entity that (1) the funds or other  
206 things of value donated are to be provided to the foundation, and

207 [that] (2) the person, firm, corporation or other entity may request in  
 208 writing that its identity be confidential, and upon such request, the  
 209 identity of the person, firm, corporation or other entity shall not be  
 210 publicly disclosed, except in the case of a donation to a foundation  
 211 established for The University of Connecticut, the personally  
 212 identifiable information of a contributor or prospective contributor  
 213 shall be exempt from disclosure pursuant to subdivision (28) of  
 214 subsection (b) of section 1-210, as amended by this act, without the  
 215 need for such a request."

This act shall take effect as follows and shall amend the following sections:		
Sec. 501	<i>October 1, 2015</i>	New section
Sec. 502	<i>October 1, 2015</i>	4-37e
Sec. 503	<i>October 1, 2015</i>	4-37f
Sec. 504	<i>October 1, 2015</i>	4-37k
Sec. 505	<i>October 1, 2015</i>	1-210(b)
Sec. 506	<i>October 1, 2015</i>	4-37h