



General Assembly

Amendment

February Session, 2016

LCO No. 4907



Offered by:
SEN. MCLACHLAN, 24th Dist.

To: Subst. Senate Bill No. 122

File No. 309

Cal. No. 249

"AN ACT CONCERNING SECURITY AT INSTITUTIONS OF HIGHER EDUCATION."

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 Section 4-37e of the general statutes is repealed and the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, 2016*):

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, 2016*):

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, inclusive, as amended by this
121 act, and recommend any corrective actions needed to ensure such
122 conformance. Each audit report shall disclose the receipt or use by the
123 foundation of any public funds in violation of said sections or any
124 other provision of the general statutes. The foundation shall provide a
125 copy of each audit report completed pursuant to this subdivision to the
126 executive authority of the state agency and the Attorney General. Each
127 financial statement required under this subdivision shall include, for
128 the fiscal year to which the statement applies, the total receipts and
129 earnings from investments of the foundation and the amount and
130 purpose of each receipt of funds by the state agency from the
131 foundation. As used in this subdivision, "fiscal year" means any
132 twelve-month period adopted by a foundation as its accounting year;

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

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

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

175 (b) In the case of a foundation established for The University of
176 Connecticut, the Board of Trustees for The University of Connecticut

177 shall adopt a policy to implement the provisions of subsection (a) of
 178 this section.

179 Sec. 504. Section 4-37k of the general statutes is repealed and the
 180 following is substituted in lieu thereof (*Effective October 1, 2016*):

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

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, 2016</i>	4-37e
Sec. 503	<i>October 1, 2016</i>	4-37f
Sec. 504	<i>October 1, 2016</i>	4-37k