

Legislative History for Connecticut Act

HB 5108	PA 52	1984
House -	688-690	(3)
Senate -	775-776, 807	(3)
G.A.E. -	1, 5-7, 9-10, 13-18, 39-44	(18)
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CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

PROCEEDINGS

1984

VOL. 27

PART 2

492-773

klc

House of Representatives

Wednesday, March 28, 1984

DEPUTY SPEAKER FRANKEL:

The bill is passed.

CLERK:

Calendar Page 5, Calendar No. 105, File No. 104,  
Substitute for House Bill No. 5255, AN ACT CONCERNING THE  
STANDING OF THE FREEDOM OF INFORMATION COMMISSION TO  
PROSECUTE AND DEFEND COURT APPEALS. Favorable report of  
the Committee on Government Administration and Elections.

REP. GROppo: (63rd)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Groppo.

REP. GROppo: (63rd)

May this item be passed retaining its place in the  
Calendar.

DEPUTY SPEAKER FRANKEL:

The motion is to pass retain this item. Is there  
objection? Hearing none, it is so ordered.

CLERK:

Calendar 106, File 102, Substitute for House Bill  
No. 5108, AN ACT CONCERNING THE CONFIDENTIALITY OF  
INVESTIGATIVE AND ENFORCEMENT ACTIONS OF THE STATE ETHICS  
COMMISSION. Favorable Report of the Committee on  
Government Administration and Elections.

House of Representatives

Wednesday, March 28, 1984

REP. LYONS: (146th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Lyons.

REP. LYONS: (146th)

Thank you, Mr. Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

DEPUTY SPEAKER FRANKEL:

The question is on acceptance and passage. Will you remark?

REP. LYONS: (146th)

Thank you, Mr. Speaker. Essentially this bill does three things. If a formal complaint is filed with the Ethics Commission, the complaint under this bill would remain confidential. Also, investigation, the entire investigation into probable cause would remain confidential and finally, if the commission finds there is no probable cause, the complaints and the entire record of the investigation would remain confidential.

The bill is designed to protect State employees and public officials who have been falsely accused of a violation of the ethics code. Thank you.

DEPUTY SPEAKER FRANKEL:

Will you remark further on this bill? Will you

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remark further? If not, the staff and guests please come to the well. Members please be seated. Will the Clerk please open the voting machine.

CLERK:

The House of Representatives is now voting by roll call. Would the members return to the Chamber immediately. The House of Representatives is now voting by roll. Would the members return to the Chamber immediately.

DEPUTY SPEAKER FRANKEL:

Have all the members voted? Have all the members voted, and is your vote properly cast? If so, the machine will be locked. Clerk please take a tally.

Will the Clerk please announce the tally.

CLERK:

House Bill 5108.

Total Number Voting 143

Necessary for Passage 72

Those Voting Yea 143

Those Voting Nay 0

Those Absent and Not Voting 8

DEPUTY SPEAKER FRANKEL:

The bill is passed.

CLERK:

Calendar Page 6, Calendar No. 111, File No. 112,

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CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS  
1984

VOL. 27

PART 2

411-809

WEDNESDAY  
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Cal. 207, File 102. Substitute for House Bill No. 5108.

AN ACT CONCERNING THE CONFIDENTIALITY OF INVESTIGATIVE AND ENFORCEMENT ACTIONS OF THE STATE ETHICS COMMISSION. Favorable report of the Committee on Government Administration and Elections.

THE CHAIR:

Senator Daniels.

SENATOR DANIELS:

Yes, Mr. President. I move for the adoption of the committee's favorable report and passage of the bill.

THE CHAIR:

Will you remark?

SENATOR DANIELS:

Yes. Mr. President, under current law, when a complaint is filed with the State Ethics Commission against a public official or state employee or candidate or lobbyist, the Commission first conducts a preliminary investigation to determine if there is probable cause, and if there is probable cause and if probable cause is found, public hearings are conducted to determine if there has been a violation.

Under current law, it is decided as to whether or not the complaint is confidential.

This bill would make the complaint confidential. Further

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the bill would make it clear that if the Commission makes a finding of no probable cause, the complaint and the record in his investigation is confidential, except upon the request of the respondent. In addition, the bill would specify that no complainant, respondent, witnesses designated party or commission or staff member can disclose to any third party any information learned from the investigation, including knowledge of the existence of the complaint which the disclosing party would not otherwise have known.

If there is no objection, Mr. President, I ask that this be placed on the Consent Calendar.

THE CHAIR:

Is there any objection? Hearing no objection, the matter will go on the Consent Calendar.

THE CLERK:

Cal. 210, File 31. House Bill No. 5140. AN ACT CONCERNING COSTS INCURRED IN THE IMPOSITION OF CIVIL PENALTIES BY THE COMMISSIONER OF ENVIRONMENTAL PROTECTION. Favorable report of the Committee on Judiciary.

THE CHAIR:

Senator Owens.

SENATOR OWENS:

Mr. President, I move acceptance of the Joint Committee's

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Roll call and then give your attention because the Consent Calendar is quite lengthy today.

THE CLERK:

An immediate roll call has been called for in the Senate. Will all senators please take their seats. An immediate roll call has been called for in the Senate. Will all senators please be seated.

THE CHAIR:

The Clerk will proceed to list the Consent Calendar for today. Mr. Clerk.

THE CLERK:

The following is today's Consent Calendar:

Page one - Cal. 59. Page two - Cal. Nos. 82, 83, 84, 85 and 86. Page three - Cal. 118. Page four - Cal. 147. Page five - Cals. 150, 153, 158. Page six - Cals. 159, 161, 162 and 164. Page eight - Cals. 171, 173 and 174. Page nine - Cals. 175, 176, 178 and 179. Page ten - Cals. 180, 182, 184 and 185. Page eleven - Cals. 189, 190 and 191. Page twelve - Cals. 193 and 194. Page thirteen - Cals. 197, 198, 199, 200 and 202. Page fourteen - Cals. 203, 204, 206 and 207. Page fifteen - Cals. 210 and 212. Page sixteen - Cals. 213 and 218. Page seventeen - Cals. 219, 220, 221 and 224. Page eighteen - Cal. No. 225. Page twenty-two - Cals.

SB 81 - SB 140  
SB 306 - SB 316  
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JOINT  
STANDING  
COMMITTEE  
HEARINGS

GOVERNMENT  
ADMINISTRATION  
AND ELECTIONS  
PART 1

1-381

1984

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State Capitol  
Room 408  
February 16, 1984  
10:00 A.M.

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kok GOVERNMENT ADMINISTRATION AND ELECTIONS

PRESIDING CHAIRMAN: Representative Atkin  
COMMITTEE MEMBERS PRESENT:  
SENATORS: Daniels, Casey, Lovegrove  
REPRESENTATIVES: Atkin, Lyons, Giles, Jaekle,  
Keefe, Kusnitz, Osler,  
Schmidle, Swensson, Torpey

REP. ATKIN: Yes, I'd like to call this hearing to order,  
now that Sen. Lovegrove is ready. We will open the  
hearing with the legislators and agency heads. Signed  
up are Mr. Eaton from the Ethics Commission and Mr.  
Pearlman from FOI. First one, Mr. Eaton.

MR. J.D. EATON: Senator Daniels, Representative Atkin, and  
members of the committee, I'm J.D. Eaton, Executive  
Director and General Counsel of the State Ethics  
Commission. Our Chairperson, Commissioner Brown apolo-  
gizes for not being here. She had planned to be out of  
state at this time and couldn't change her plans when  
this meeting, this hearing was scheduled.

The Ethics Commission supports Raised Committee Bills  
44, 45, 47, 5107 and 5108. It supports the first four  
as they're written and it has a couple of recommendations  
with regard to the bill concerning confidentiality of  
preliminary investigations, 5108.

Since I'm a standin, although there are statements, I  
am going to run down the statements a little bit and  
try to follow the Commission's understanding.

The technical corrections in Raised Committee Bill No. 44  
are supported. One of them is of immediate importance,  
it seems to me. You will recall that last year there  
were two new disclosure requirements I inserted in  
statements of financial interest. One was for the  
creditors to whom a filer owed \$10,000, over \$10,000,  
should be listed. The other was that leases and contracts

MR. EATON: (continued)  
may very well settle the matter at that stage.

The commission would prefer the unrestricted subpoena power that most state agencies have and that most agencies in other jurisdictions that have similar responsibilities. A list of the Connecticut agencies having unrestricted subpoena power, except in the case of the Ethics Commission and one other, is appended to the Chairperson's statement. However, the bill that you have raised, which would give the commission subpoena power once a complaint's filed, would solve almost all the problems that the commission suffers at the moment.

The final bill is Raised Committee Bill No. 5108, which concerns the confidentiality of preliminary investigations, the probable cause hearings I was talking about with regard to subpoena power. When the commission was established in 1977, our enforcement proceedings were made a two stage affair. The first stage which was the preliminary investigation into probable cause was intended to be confidential because of the possibility of unfounded or vicious complaint, and then followed by a formal public hearing into whether there had in fact been a violation.

The language to accomplish the confidentiality of the probable cause hearing was quite inadequate and last year the commission sponsored and the legislature enacted changes to the confidentiality provisions with regard to the persons who are affected by them, with regard to the findings and to the record, and a much more complete statement concerning confidentiality was introduced into our statutes.

The commission's recommendation was that everybody be affected by the confidentiality provision, and it was an absolute ban on anyone disclosing information concerning these proceedings. It was pointed out in the debate on this matter that this was questionable constitutionally, in that if the press were to find out something about this and publish it, our statute would impose a prior restraint on the press doing this.

Representative Tulisano brought this up and he deleted it from Part I, the Code of Ethics for Public Officials but he did not delete it from Part II. Now in Part I,

MR. EATON: (continued)

as far as persons affected are concerned, we have the insufficient language in the statutes since 1977. In Part II, we have language which may not be constitutional and so in that respect the provisions of this bill which would change the persons affected to those who are participants in the preliminary investigation, would be an improvement upon what's in both of our statutes, and we believe that there's no problem with this confidentiality. It's not over broad, but it's much better than what is with the restrictions, simply on witnesses, which is what Part I has now.

This bill would make the complaint confidential and an attempt to file a complaint confidential. It preserves the confidentiality of the preliminary investigation but doesn't limit the disclosure of information which an affected person may have learned through some other means, and this would be true in the case of the confidentiality of the complaint. If a person had information on which he was going to file a complaint, he could talk all he wanted about the information. He just couldn't lend credibility to it by saying I'm going to file a complaint with the Ethics Commission. This can be particularly damaging if it's done shortly before an election, for example.

If no probable cause is found, the finding in the record remain confidential. If probable cause is found the commission publishes the finding and the bill would make the record public also, and in all cases the confidentiality is at the option of the respondent. If he wants to have everything open, everything can be open.

The commission has a few recommendations. The first is that the language in its -- the lines are spelled out in the statement, where the intent to file is made confidential, is a little too broad, I think. It says no one may disclose that a person is intending to file a complaint. And it seems to me this suffers the weakness of the language. Last year it was overly broad, and it should be just the person who's going to file a complaint who has to withhold this intent.

Fortunately I'm finishing up. There are a couple of other recommendations that are in the statement, and I will cease.

REP. OSLER: We will get --

REP. TORPEY: Is that against the law, you're bribing him or something? There must be something you're talking about.

MR. EATON: My last few comments were not all that important and they're in the statement.

REP. ATKIN: Thanks, Dave. Are there questions from the committee? Rep. Lyons

REP. LYONS: Yes, I'm not clear on something you said. When you have a (inaudible) --

REP. ATKIN: Use the mike, Moira. We're recording.

REP. LYONS: Oh, sorry. When you have a probable cause hearing -- the before also -- the complaint of the person who feels he has a reason for this is kept confidential.

MR. EATON: Right.

REP. LYONS: And the -- what is occurring at the hearing itself, unless you find that there is a reason for this to go on, is that's -- what you're saying in this bill is those pieces are kept confidential unless there's a reason for disclosure.

MR. EATON: The complaint is kept confidential unless probable cause is found because, if probable cause is found, the whole record, which would include the complaint, would become a matter of public information.

REP. LYONS: And the probable cause hearing itself would be kept confidential unless --

MR. EATON: That's right. During the proceedings, what is going on would be kept confidential. But once probable cause is found then the record, which reflects the proceedings would become public according to this bill, if probable cause is found. If probable cause is not found, then the record and the proceedings remain confidential.

REP. LYONS: And then when you were asking for subpoena powers for probable cause hearings, you made a statement

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MR. EATON: (continued)  
for Public Officials or the Code of Ethics for Lobbyists has been violated. And, it's up to the commission to find out whether there's probable cause to believe that that's true. It's just the way it works in the criminal area.

REP. TORPEY: That may be the way it works, but doesn't the Constitution of our state say that you have to have probable cause before you do this?

MR. EATON: Not to my knowledge. In the criminal area, people will file a statement saying I think somebody has violated the law. And then they go through these proceedings just as we do. Morgan?

MORGAN O'BRIEN: In any kind of proceedings where there's a charge of violation of the law, the first step is a determination of probable cause. And it's usually something in the nature of a hearing. Any kind of criminal violation you -- the Constitution requires that you must be brought before a magistrate a reasonable time. It's a preliminary determination whether there should be any further law enforcement action.

REP. TORPEY: So your answer is: not in violation of our Constitution.

MR. O'BRIEN: I don't think so.

MR. EATON: There are protections, Rep. Torpey, in that -- the statute says that if the complaint is groundless, then the person has cause of action against the one who filed the complaint and can get not only his damages, but double damages as well. So that's one protection against groundless complaints.

REP. ATKIN: Rep. Osler.

REP. OSLER: I'd like to ask if this -- if the person bringing the charge has made it public before he comes to the Ethics Commission, does it still bind the person who is accused to confidentiality. I mean, wouldn't that person who is accused have a right to say in public what he feels his side is also?

MR. EATON: He always has that right if that's involved, so he can -- with or without this bill, the respondent now, and

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MR. EATON: (continued)  
under this bill, and always had the opportunity to say I would like everything to be open. Then he can say anything he wants in his own defense. Or, he can keep it confidential, if he would prefer it.

REP. OSLER: But, well, if he would be found innocent or charges, or there was no probable cause, it could be dropped but perhaps he might want to make it public. Now he's not bound, it's just the Ethics Commission and lawyers involved and, well I guess the person charged --

MR. EATON: Witnesses, the complainant, and so on. They're bound, but the respondent can do anything he wants. And he can release them if he'd like to.

REP. OSLER: Okay, thank you.

REP. ATKIN: Further questions? If not, thank you, Dave.

MR. EATON: If I may, now that I've recovered my voice, there's one justification for -- the commission recommends that even if the probable cause is found, that the record remain confidential. There's one justification for that in the much broader, looser rules of evidence. There's one justification on the statement. The second justification that's not on the statement is that the -- a complaint may contain a number of charges and probable cause may be found as to one or just some and not as to others. And, keeping the record confidential would support the position that if probable cause is not found, the whole thing should be kept confidential in the end. And trying to go through the record and expunge portions of statements when the testimony's all mixed up reflects on the credibility of the Ethics Commission and endangers, I think, the respondent unnecessarily.

REP. ATKIN: Thank you. No further questions? Thank you, Dave. Sen. Schneller, followed by Ms. Perlman.

SEN. SCHNELLER: Mr. Chairman, Sen. Daniels, members of the committee, I am impressed by the large attendance that you have here with your committee this morning. Obviously, you have a very interesting agenda today. And so, I'll be very brief.

I'm here to speak in favor of your Raised Bill No. 48, An

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SEN. SCHNELLER: Thank you very much.

REP. ATKIN: Mitch Perlman.

MITCH PERLMAN: Do I get my water before I start? Good morning, my name is Mitchell Perlman. I'm the Executive Director and General Counsel of the Connecticut Freedom of Information Commission. And a big fan of Dave Eaton and the Ethics Commission. But, I am here to speak on the particular section of Raised Committee Bill No. 5108, An Act Concerning the Confidentiality of Investigative and Enforcement Actions of the State Ethics Commission.

The Freedom of Information Commission recognizes that there is a need for confidentiality, particularly in an initial investigatory stages in any number of investigative bodies of the State of Connecticut, the State Ethics Commission being one. So the law as it has been drafted and has been in existence for the State Ethics Commission has not presented a particular philosophical policy problem to the commission.

However, in looking at this bill, I'd like to call the committee's attention, particularly, to sections 2e and would start on page 4, line 130; and the corresponding section 4e which is on page 8 and starts at line 241. One is the corresponding one for the ethics law for public officials and one for ethics -- for lobbyists.

This subsection "e" provides that the commission shall publish a finding of probable cause. This is after its investigation which is confidential -- not later than five days after the termination of the investigation. At such time, the entire record of the investigation shall be made public, except that the commission may postpone examination or release of public records until a stipulation agreement pursuant to subsection "d", section 4-177 of the general statutes is accepted or rejected.

There are two aspects, one of which we are in support, and one of which I think it would -- might be better if there were a change. We think that it's a good idea that the entire record be made available to the public after a finding of probable cause. The reason why we say that is the decisions of any body are not made in a vacuum. And if one looks at a document like a statement of charges or finding of probable cause, you see the elements that were

MR. PERLMAN: (continued)

deemed important by the agency in making that document. What you don't see is the rest of the material that they had before them. So, for example, there might be five items of culpability, and 25 items of non-culpability. All you would see is the five items of culpability, and in public oversight of how agencies are operating effectively and in the public interest, we think it's very important that people have access not only for the reasons that agencies make decisions, but what reasons they have decided were unimportant in reaching those decisions.

So we would concur that that is good language. However, the language we do have a problem with has to do with the period of time that the commission, the Ethics Commission, may postpone examination or release. There is an indefinite period in there and that could go on for years, and years. We believe that it would be advantageous to have a specific period. It would be advantageous both because it wouldn't be open-ended, and the public would know that they're entitled to access to the information that would be made public after a certain period of time. And we also think -- and I've discussed this with Dave informally -- that it might very well help the Ethics Commission in reaching the kind of stipulation agreement they would hope to get by putting a deadline on it.

In my discussion with him, he thought that 14 days would be a reasonable period of time. So, our suggestion is that that language starting at line 134 after the words public records reads something like for a period of 14 days for the purpose of reaching a stipulation agreement pursuant to subsection "d" of section 4-177. And that would allow the period. So that if there were negotiations, it would be closed-ended and the fact that there would be a publication of the record might serve as incentive to the party found in violation to reach an accommodation, and thus not the need for the public hearing.

Just one other comment, which the word in line 130, the word publish, sometimes causes consternation. I've heard any number of debates, particularly on the floor of the House, where distinctions are often tried to be made between the word publish and make public. I think that if the

MR. PERLMAN: (continued)  
object -- and as I read the intent of this section, is to make public, not necessarily to put it in the Hartford Courant, that maybe that phrase make public as opposed to publish ought to be used.

As I said, there are of course these provisions which I've just discussed in subsection "e" of section 2 also have this very same language in subsection "e" of section 4. Thank you very much.

REP. ATKIN: Thank you, Mitch. Questions?

SEN. DANIELS: Yes, I'm not sure I followed you, Mitch, in terms of where do you want to insert the 14 days for the purpose of reaching an agreement?

MR. PERLMAN: In line 134 on the top of page 5. May postpone examination or release of such public records for a period of 14 days for the purpose of reaching -- and then delete until and add a stipulation agreement pursuant to subsection "d", etc.

SEN. DANIELS: All right, what about the next paragraph. Subsection "f", not later than 15 days. Should those two time periods be the same. Or, does that make any difference?

MR. PERLMAN: No, not to me. Again, I am certainly not an expert in the administration of the ethics laws. I just thought it would be a good idea from a public access point of view to have a finite period of time. In discussing it with Dave Eaton, he thought 14 days, or in his more poetic way of putting it, a fortnight. And so 14 or 15 days, no difficulty.

REP. ATKIN: Further questions? Jack. Would you take the mike, Jack?

REP. KEEFE: In line 130, you wish to change to "made public" from "shall publish", what's your interpretation of one as opposed to the other? Making public or publishing?

MR. PERLMAN: I think my interpretation is the context in which it's used. However, -- and I think that the context in which it's used in this bill, it means to make public. Some people, in the debates that I have heard on the floor

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MR. PERLMAN: (continued)  
of the House, particularly, have tried to make a distinction that publish means to put in a journal or a newspaper or that. And, if that's the intent, that's fine. It just doesn't seem to make sense in this context. But, to eliminate that kind of possible error in intent, I would suggest using the phrase "make public."

REP. KEEFE: That's the explanation I was seeking.

MR. PERLMAN: Okay, thank you.

REP. ATKIN: Thank you, Mitch. Further questions? Thanks.

MR. PERLMAN: Thank you.

REP. ATKIN: Any other agency heads or legislators wishing to speak at this time? Okay, that concludes the legislator and agency heads section of this public hearing. We do have to wait until -- have to be here at 11:00, but I'll start in with the public. And, if the public finishes before 11:00 o'clock, we will stay around in case there are any other public that shows up after 11:00. The first person listed in the public sector is Betty Gallo, Common Cause.

BETTY GALLO: My name is Betty Gallo and I'm speaking today from Common Cause, Connecticut. It probably will not surprise this committee that we are here to strongly support the ethics bills before you today. I would like to speak briefly on two of the bills. One is An Act HB5107 Concerning the Subpoena Power of the State Ethics Commission. And the other one is An Act Concerning Confidentiality of Investigative and Enforcement Actions of the State Ethics Commission. HB5108

Both of these proposals were recommendations of the Ethics Study Committee of which I was a member, and approved by this committee last year. Common Cause believes these are important reforms, especially the provision regarding subpoena power. Connecticut has model ethics legislation, but that legislation is only as good as the enforcement power of the commission. Lack of subpoena power for probable cause stage of the commission seems to be an artificially imposed barrier to enforcement. All attorneys licensed in the State of Connecticut may issue subpoenas. The Executive Director and the Investigator for the

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MS. GALLO: (continued)

commission are attorneys. Still they do not use this power in a probable cause hearing stage because there is no specific authorization in the statutes.

Last year certain legislators raised the possibility of a "witch hunt" by the commission if it was granted subpoena power at this stage. The commission is made up of individuals appointed by the Governor and the leadership of this general assembly. The commission has a seven-year record of responsible activity. Common Cause believes such fears are without foundation.

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The bill addressing the confidentiality of probable cause investigation is another recommendation of the study committee. This bill is designed to protect lobbyists and public officials who are falsely accused of violations of the law from having someone go before -- go to the newspapers and call up and say "I'm reporting Sen. Jones to the Ethics Commission." It takes the commission a certain period of time, say three weeks, to investigate the complaint, find it was without any substance. Meanwhile the newspaper speculations, the speculations in the legislator or public official's district continues about this possible violation. We believe that such complaints should not be made public until probable cause is proven.

It is very rare that Common Cause finds itself in the middle of the Ethics Commission and Freedom of Information Commission. And so we'll have to take sides. But today we're going to come down on the side of Freedom of Information Commission as did the study committee. And we believe that the record, once probable cause is proven, should be made open. Thank you for your consideration. And, if you have any questions, I'd be glad to answer them.

REP. ATKIN: Thank you, Betty. Questions from the committee? Dorothy.

REP. OSLER: You don't like the two-week or the 14-day delay?

MS. GALLO: No, that's fine. The question that we're addressing and -- I think both the Ethics Commission and FOI have no trouble with the 14-day delay in even putting 14 days into the bill. The problem is, once probable cause is proven, there is a record that has been established in order to establish probable cause. And if you've proven probable

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- MS. GALLO: (continued)  
cause violations, I believe, as does the Freedom of Information Commission, that you should open that record which has been closed up until that time. Because now we're going into a public part of the hearing.
- REP. OSLER: And what might the delay time and a probable cause hearing and a formal hearing -- did you say anything about --
- MS. GALLO: No, the 14-days --
- REP. OSLER: No, yeah, well -- I understand that, but I mean supposing they find probable cause. Then what is the average time before they get to the formal hearing for that person?
- MS. GALLO: I'm not sure exactly. I would depend obviously on what --
- REP. OSLER: Not like the courts, a couple of years, obviously --
- MS. GALLO: Actually, I assume it would be a matter of a couple weeks, giving everybody time to prepare testimony. The thing is the probable cause record may not all be presented at the hearing so that the ability to see that whole record needs to be established in a law. We're not saying that when an open hearing comes, if it comes, because mostly what happens is there's stipulations signed. Very seldom does it come to full hearing.
- But, even in the full hearing, that probable cause investigation may not totally become public.
- REP. OSLER: Okay, thank you.
- REP. ATKIN: Further questions from the committee? Thank you, Betty. Pat Sullivan.
- PAT SULLIVAN: Hello everybody. For the record, I'm Pat Sullivan and I'm a lobbyist with the firm of Sullivan and Leshane.
- REP. SCHMIDLE: Pat who? SB45
- MR. SULLIVAN: Patrick Sullivan. What I would like to do is I would like to raise some questions that I think this

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MR. EATON: (continued)  
got to look at all three of these things at one reportable occasion, but you handle them differently. Obviously we didn't make clear that there was no violation on the part of anybody with this \$20 dinner and the \$36 hockey.

REP. ATKIN: Have you rewritten the memo or the ruling to clear that up?

MR. EATON: No, this is the first time I realized you didn't understand it. We'll take a look at it. Perhaps it has to be revised because of course these are published for everybody's benefit.

REP. ATKIN: How about the other one?

MR. EATON: The other complaint, I gather he has waived any confidentiality there may be about this. There was no complaint with a capital "C". The statute says that when a complaint's filed on a form described by the Commission, then the person against whom the complaint has been made will be informed within three business days.

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There was no complaint. As he said elsewhere, there were a couple of tips that there may have been a violation of the code, and we looked into it. Part of the problem that we looked at then and we looked at the occasion that was reported, and what had happened, as you said, there were three people involved. And it was obviously one occasion or it seemed obvious, the same time and same place. But some people would be reported by everybody. Some people would be reported by two of these people. Some people would be reported by one.

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And there was just no way to make sense of these reports if it was the same occasion. It didn't add up. Which is why we have told people from now on if three people host an occasion, all the people who are beneficiaries must be listed. List them all, then list how much you contributed toward this, and there were two other co-hosts. You can go to their reports.

REP. ATKIN: But maybe part of the question then is should the Commission and/or it's staff be taking time to follow up on an anonymous tip which may not, may or may not pan

REP. ATKIN: (continued)  
out. It may just be a crank tip to get somebody in trouble. Or should the Commission and/or staff again be in a position to only follow up legitimate, formal, written complaints. Maybe that's one of the underlying questions. I don't know.

MR. EATON: Well, you can look at this two ways. One of the things, to digress just a little bit from this specific example, we often see something in the paper saying that there has been an article indicating there may have been a violation of code of ethics of public officials. And you're suggesting that we perhaps should wait and see if anybody wants to make a complaint about it.

REP. ATKIN: I'm asking a question.

MR. EATON: OK, we at the Commission could do two things. We could wait and see if anybody filed a complaint about it, and if nobody filed a complaint just ignore this possible violation. Or you can look into whether there has been a violation. This was not entirely unsubstantiated. As I say, there was a report that there had been an excessive bill paid at a particular occasion. When we looked into the reports, the financial reports, of the people involved, you couldn't make heads nor tails of the reports because they had all reported it differently and in such a way that it looked like there might very well have been a violation.

So what we did is we went to the place that the occasion occurred and said we'd like to see their bills. But I think that if the Commission's going to lose credibility if there are apparent violations of the code of ethics for public officials or for lobbyists and they do nothing about it unless somebody else comes in and complains.

REP. ATKIN: How about the allegation that when he asked the Commission, I don't know who on the Commission, but when he asked where the tip came from, the Commission did say to him that it was regular process for the Commission to check restaurants' records.

MR. EATON: We do that to some extent. I'll have to check on that. I wasn't the one who said it, and again I didn't know about this until just now.

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REP. ATKIN: Any further questions? Sen. Lovegrove?

SEN. LOVEGROVE: How many anonymous tips do you get a year?

MR. EATON: Very few. Three or four.

SEN. LOVEGROVE: And you act on all three or four?

MR. EATON: It all depends upon how you mean act. There's the Commission and there's the Commission staff, as you can well realize. The Commission staff will normally look in to see if there's anything at all to this issue, and depending upon how hard it is to find out anything about it or what it looks like once we find something, we may look into it further. But we don't ignore a tip simply because it's anonymous.

SEN. LOVEGROVE: Maybe I should change that. We, this was not anonymous. We knew who the people were. In both cases, we got two tips about the same occasion from people in whom we have a great deal of reliance.

SEN. LOVEGROVE: Is there some point when the accused can find out who the accuser was in your process?

MR. EATON: Well, there's no real process here.

SEN. LOVEGROVE: Well, at what point could Pat Sullivan find out who accused him of something?

MR. EATON: We never told him.

SEN. LOVEGROVE: I don't think that's right. If somebody accuses me of something, they ought be able to stand up and face me.

MR. EATON: There's a great deal of merit to that. This was in part an accusation, and well, I guess you'd call it an accusation. But obviously he knows we looked into it and said we found that there was no problem.

SEN. LOVEGROVE: Well, as he said, he was in the process of competing for clients, and apparently once you started your investigation it became public knowledge among the lobbying industry that they had had problems.

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MR. EATON: I understand. It was not from the Commission that this came out.

SEN. LOVEGROVE: Well, apparently from what he said, you called the restaurant, the restaurant called him. Who else in the restaurant would tell the Ethics Commission is involved with Pat Sullivan.

MR. EATON: And we tried to reduce any possible sting in that case by saying this is a routine investigation.

SEN. LOVEGROVE: I don't think in that case that it would be public.

MR. EATON: Pardon?

SEN. LOVEGROVE: I would think in that case the accuser would have to be public.

MR. EATON: Or at least known to Mr. Sullivan, you're saying.

SEN. LOVEGROVE: Well, that's public. He's free to run around and flap his jaws.

REP. ATKIN: Mae?

REP. SCHMIDLE: I just have one short question which may already have been answered in part, and that was do you have a policy on anonymous complaints, or are you planning to develop one as a result of what's been going on?

MR. EATON: I'm going to have to go back and see what we have that are anonymous to us. And the more I think about it, the less I can't recall any that we've done anything about. But I'm going to have to review it and what Mr. Sullivan was saying was it was anonymous to him, and I think he realized that we did know who the people were.

But we did have confidence in both of them, and they both talked about the same thing, and then when we looked at the reports filed by the people that were supposed to be involved, the reports indicated that there was some problem, which is why we looked into it further.

REP. SCHMIDLE: Thank you.

REP. ATKIN: Margaret?

REP. LYONS: I was just wondering, you have a policy, if a formal complaint is filed, you then inform the individual against whom the complaint has been filed. Do you feel then if in this case an anonymous complaint has been filed and you're going to look into it, then the individual that you're investigating should not also be made aware in this instance and not find it out down the road that all this has been going on?

MR. EATON: We're like any agency going to an investigation. If the person knows he's being investigated, it's very easy to cover up his tracks and destroy any incriminating information and so on and so forth. So initially, at least, when we are trying to keep the thing confidential we would prefer to keep it confidential from everybody.

REP. LYONS: But you do do it in a case of someone just having to fill out a form? You do tell the person and in this case you would probably follow somewhat the same procedure except you don't tell the person. As far as looking into it originally, the investigation.

MR. EATON: We look at it more casually normally if we don't have a formal complaint. A formal complaint has a series of deadlines established for us by statute. The other one we look into it as we can to see if there is anything, and we haven't normally notified the person unless it appears to us that there's no problem. And then we'll go to the person and make sure there is no problem. If we think there is a problem, we're like anybody who's looking into something. We'd prefer to find out what we can before the person knows that we're looking.

REP. GILES: The more this thing goes on, the more I get confused. Don't your Commission have the right to file a complaint also?

MR. EATON: Yes, it does.

REP. GILES: OK, well, at that point, shouldn't the person be notified?

MR. EATON: The person would be within three days.

REP. GILES: If you filed a complaint.

MR. EATON: If the complaint's filed. But if we're just looking to see whether a complaint should be filed, then we haven't been notifying the person normally.

REP. GILES: Really, I think something should be done about that, because I think what happened with this fellow who was sitting here a minute ago, those kind of things are going to get out anyway. You're not going to be able to keep them in your office. If you could, fine. But you're not going to be able to keep them in the office. Like if you call the restaurant. People are just going to talk, that's all. So I think those kinds of things shouldn't happen.

MR. EATON: I certainly will bring this to the attention of the Commission. It's obvious the committee feels that way.

REP. ATKIN: Further questions or comments for Dave? Thanks for sticking around, Dave. I appreciate it. Any other members of the public wish to testify at this time? If not, don't forget the songfest in the Hall of Flags at 12:30. Public hearing at 2:00 on the merits of the State song. The hearing is adjourned.