

Legislative History for Connecticut Act

HB 7046	PA 140	1991
House	3874-3916	(43)
Senate	1632-1633, 1690-1691	(4)
Government Administration and Elections	256, 259-260, 283-285, 287, 289-292, 305-307, 314-315	293-294 (13) 80p

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
and House of Representatives Proceedings

Connecticut State Library

Compiled 2012

H-595

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1991

VOL. 34
PART 10
3569-3970

pat

House of Representatives

Wednesday, May 1, 1991

for House Bill 5490, File 275, AN ACT CONCERNING
BALLOTS ON CREATING HISTORIC DISTRICTS.

At this time, I'd like to move those items to the Consent Calendar for action at our next regularly scheduled session. Thank you, Mr. Speaker.

DEPUTY SPEAKER MARKHAM:

The gentleman has moved the following items to the Consent Calendar.

Calendar 387, House Bill 6055, File 452; Calendar 392, House Bill 7265, File 453; Calendar 398, House Bill 7357, File 460; Calendar 405, House Bill 7148, File 470; Calendar 431, Senate Bill 729, File 362; Calendar 434, Senate Bill 867, File 331; Calendar 435, Senate Bill 871, File 329; Calendar 438, Senate Bill 941, File 334; Calendar 177, House Bill 7132, File 180, that's under matters returned from Committee, and Calendar 242, House Bill 5490, File 275.

Is there objection of moving those items to the
Consent Calendar for action at our next session? Is
there objection? Hearing none, so ordered.

CLERK:

Please turn to Page 7, Calendar 359, Substitute for
House Bill 7046, AN ACT CONCERNING PENDING CLAIMS AND
LITIGATION UNDER THE FREEDOM OF INFORMATION ACT.
Favorable Report of the Committee on GAE.

pat

House of Representatives

Wednesday, May 1, 1991

REP. KINER: (59th)

Mr. Speaker. Mr. Speaker.

DEPUTY SPEAKER MARKHAM:

Representative Kiner of the 59th.

REP. KINER: (59th)

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

DEPUTY SPEAKER MARKHAM:

The question is on adoption of the Joint Committee's Favorable Report and passage of the bill. Will you remark, Sir?

REP. KINER: (59th)

Yes, Mr. Speaker, thank you. Mr. Speaker and ladies and gentlemen, except for a few narrowly defined circumstances, a public agency must hold all of its meetings open to the public.

One of those exceptions is for strategy and negotiations with respect to pending claims and litigation, and it's this bill, Mr. Speaker that seeks to define what a pending claim in litigation is.

Mr. Speaker, the Clerk has an amendment, LCO6111. Would the Clerk please call and may I be given leave to summarize, Sir.

CLERK:

The Clerk has in his possession amendment LCO

pat

House of Representatives

Wednesday, May 1, 1991

Number 6111 designated House Amendment Schedule "A".

Will the Clerk please call the amendment.

CLERK:

LCO6111, House "A", offered by Representative Kiner et al.

DEPUTY SPEAKER MARKHAM:

The gentleman has sought leave of the Chamber to summarize. Is there objection? Is there objection? Hearing none, please proceed, Representative Kiner.

REP. KINER: (59th)

Mr. Speaker, thank you. Just to summarize the amendment, the amendment indeed defines specifically, what a pending claim is and what pending litigation is. Mr. Speaker, I move adoption of the amendment.

DEPUTY SPEAKER MARKHAM:

The question is on adoption. Will you remark?

REP. KINER: (59th)

Thank you, Mr. Speaker. Mr. Speaker, what we are attempting to do by this bill and indeed by this amendment, is to prevent a situation from occurring where agencies can by mere whim, by mere yelling litigation, if you will, go into executive session.

We don't believe that good government is served if that were to occur. On the other hand, we have to balance the needs of the agency, whether it be the town

pat

101

House of Representatives

Wednesday, May 1, 1991

or whatever agency we're referring to in their ability to negotiate a settlement without the need for litigation.

Mr. Speaker, we believe that this amendment does just that, and Sir, I move adoption of the amendment.

DEPUTY SPEAKER MARKHAM:

Thank you, Representative Kiner. Will you remark further on House Amendment Schedule "A".

Representative Belden of the 113th.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. I suppose this is fine in that it defines something that maybe is not defined right now, but if I might, let me pose a theoretical situation that might occur, or did occur, that I was a party to.

We over on the board of CRRA --

DEPUTY SPEAKER MARKHAM:

Excuse me, Representative Belden, I presume this is a question to the gentleman.

REP. BELDEN: (113th)

This is a question, through you, to the proponent of the amendment.

DEPUTY SPEAKER MARKHAM:

Please proceed.

REP. BELDEN: (113th)

pat

House of Representatives

Wednesday, May 1, 1991

We placed insurance coverage on the boilers on The Hartford Waste Recovery project on a Tuesday. On a Friday, one of the boilers let go. If on Monday morning we wanted to sit down and discuss what potential legal ramifications might develop from that failure of that boiler and how it might affect us, as I understand this file now, if we adopt it, until such time as a written piece of paper is in the hands of the agency, we cannot go into executive session to discuss the matter. Is that a true statement? Through you, Mr. Speaker.

DEPUTY SPEAKER MARKHAM:

Representative Kiner.

REP. KINER: (59th)

Through you, Mr. Speaker, I think looking at, and listening to the gentleman's scenario, I believe he is protected. As I look at lines 106 and 107 of the amendment, that's the flip side of what we were originally talking about, allowing the agency the ability to sit down in executive session to determine what your legal relief or legal rights are.

So I believe in the scenario that the gentleman just gave me, again, Sir, you are covered.

REP. BELDEN: (113th)

Mr. Speaker.

pat

House of Representatives

Wednesday, May 1, 1991

DEPUTY SPEAKER MARKHAM:

Representative Belden.

REP. BELDEN: (113th)

Through you, Mr. Speaker, to Representative Kiner, I assume you're referring to lines 106 and 107 sub 3, the agency's consideration of action to enforce or implement legal relief or a legal right.

Your operating under the assumption that regardless of whether or not a written notification of pending legal action has been received by the agency, that it has the right to call an executive session to discuss matters which might in fact result in a legal action being taken against the agency.

REP. KINER: (59th)

Mr. Speaker, through you, I think I misunderstood the Representative's query. I was under the impression that the agency he was referring to was going to be instituting the legal action, and as such, that's why I indicated to Representative Belden that indeed that agency would be covered under sub3 of this act.

Apparently, that's not what the gentleman is asking. The gentleman is asking, well, let me, I don't want to put words in the gentleman's mouth. Perhaps Representative Belden can ask, can rephrase the question to me once more, to make sure that indeed,

pat

House of Representatives

Wednesday, May 1, 1991

that agency is protected.

DEPUTY SPEAKER MARKHAM:

Representative Belden.

REP. BELDEN: (113th)

I'll be very plain and simple. I just want to know if a body or an agency is defined in these statutes, decides it wants to sit down and determine whether or not it has a potential of litigation against it, whether it can do that in executive session prior to the receipt of a notice of litigation being filed. Through you, Mr. Speaker.

REP. KINER: (59th)

Through you, Mr. Speaker, if the agency is doing the actual enforcing of the implementation of legal relief or legal right, then the agency does not need any written document.

If, on the other hand the agency believes that there might indeed be litigation, it would seem to me as though there would need to be written notice at first. Otherwise, that kind of situation would circumvent the bill before us. It would simply allow an agency to say, hey, we believe there's going to be a lawsuit, so let's go into executive session.

We really want to prevent that from occurring. We want open government to occur, and yet we also want the

pat

House of Representatives

Wednesday, May 1, 1991

agency to be protected. It would seem to me as though this amendment strikes that kind of a balance. Through you, Mr. Speaker.

DEPUTY SPEAKER MARKHAM:

Representative Belden.

REP. BELDEN: (113th)

Mr. Speaker, I don't think this amendment strikes any kind of balance. It in fact becomes the file and as such, I think that the hands of every agency in this State would be tied as far as them sitting down in a room and saying, look, over the weekend the police department, one of the cruisers had a crash with so and so, whatever, and let's get the corporation counsel in here and determine whether or not what our legal position is on this matter.

As I understand this file, unless somebody can point out otherwise, let me tell you, there will be no, that meeting would have to be in the open. And I don't think when we don't expect a lawyer and his client to have their meeting in the open when they're going to address a suit pending against them, or the potential of a suit pending against them, and I don't think we ought to tie the hands of any agency in that regard.

Ladies and gentlemen, I would just suggest we defeat this amendment which will defeat the bill.

pat

106

House of Representatives

Wednesday, May 1, 1991

When your towns get ahold of this after and they come back to you, boy oh boy, will you regret passage of this bill.

DEPUTY SPEAKER MARKHAM:

Will you remark further on the amendment?

Representative Rennie of the 14th.

REP. RENNIE: (14th)

Thank you, Mr. Speaker. I guess I take my point of view on this bill and the amendment is diametrically opposed to Representative Belden's and that is, I think it limits us, it limits the public too much, not the duly elected representatives of the public.

And there are those, I guess, who think that every time someone gives a dirty look to any public body, that public body ought to be able to retreat into executive session. Well, that isn't how it should be.

And in fact, that is not how it has been for a very long time, until a most unfortunate Supreme Court case was handed down. And that turned the law on its head. The Freedom of Information Act has been eroded year after year by Connecticut's Superior Courts and by the Supreme Court. This does something, not enough for some of us, but it does something to restore the rights of the public that existed before the Supreme Court handed down its decision last year.

pat

House of Representatives

Wednesday, May 1, 1991

DEPUTY SPEAKER MARKHAM:

Will you remark further?

REP. RADCLIFFE: (123rd)

Mr. Speaker.

DEPUTY SPEAKER MARKHAM:

Representative Radcliffe of the 123rd.

REP. RADCLIFFE: (123rd)

Thank you, Mr. Speaker. Several questions if I may, through you, to the proponent of the bill, or the amendment, which becomes the bill.

DEPUTY SPEAKER MARKHAM:

Please frame your question, Sir.

REP. RADCLIFFE: (123rd)

Thank you. Through you, Mr. Speaker, on line 98, the amendment uses the phrase institute an action. May I interpret action in line 98 to mean something other than a lawsuit. It could mean a complaint to an administrative agency, through you, Mr. Speaker.

REP. KINER: (59th)

Through you, Mr. Speaker, that's absolutely correct. As we look at pending claim, the definition of pending claim on lines 98 through 99, we talk about instituting this action through an appropriate forum, we do not mean a court. Something along the lines of perhaps FOI, CHRO, and so forth.

House of Representatives

Wednesday, May 1, 1991

If we're talking about actual litigation before a court of law which perhaps will be the gentleman's next question, that will be the definition, as I read it, of pending litigation.

REP. RADCLIFFE: (123rd)

Well, through you, Mr. Speaker, I'm specifically concerned about an action being brought through an administrative agency or any agency, for example, of town government or a local board of education.

If I might frame a question in the form of a hypothetical, for example, most school districts have transportation policies, school bus policies, for walkers or bus riders just to take one example. If a parent felt that a child should be accorded bus privileges for one reason or another within the policy, and wrote a letter saying that they thought a bus should pick up their child for one reason or another, and if this was not done, they would take appropriate action.

Would the letter containing the phrase appropriate action be sufficient to trigger the executive session provisions of the Freedom of Information Act, since it would be a possible appeal for the board, or appeal consistent with an administrative policy. Through you, Mr. Speaker.

pat

House of Representatives

Wednesday, May 1, 1991

DEPUTY SPEAKER MARKHAM:

Representative Kiner.

REP. KINER: (59th)

Through you, Mr. Speaker, I would have to know where that appropriate action would be taken. If it would be taken merely to the board of education, this amendment would not kick in.

If, on the other hand, if the forum would be some other agency in the State, that has the ability to adjudicate these kind of matters, and if indeed that letter was a written letter, then this amendment would cover that type of scenario.

REP. RADCLIFFE: (123rd)

As I understand the procedure, again, through you, Mr. Speaker, under those circumstances, an individual would initially be required to bring a complaint to the local board of education. If the local board of education denied the complaint there is an appeal procedure to the State Board of Education or to a hearing examiner, so the initial phrase from an exhaustion standpoint would have to be with the local board of education.

So, through you, Mr. Speaker, I'll again ask the question, if a letter is sent either by the individual through counsel, indicating that we desire certain

pat

110

House of Representatives

Wednesday, May 1, 1991

relief, that we feel the transportation should be granted, and if it is not, we will take all appropriate action, would the phrase, all appropriate action, the first step of which is an appeal to the local board of education be sufficient to trigger an executive session.

It certainly would under the Ridgefield case and I'd like to know if that would be the type of situation that would no longer be covered and no longer allow a body to go into executive session. Through you, Mr. Speaker.

REP. KINER: (59th)

Mr. Speaker.

DEPUTY SPEAKER MARKHAM:

Representative Kiner.

REP. KINER: (59th)

Using that scenario, assuming now that this particular demand for legal relief or asserting a legal right, I assume legal relief in the Representative's case, if indeed the appropriate forum goes beyond that of the board of education, I would suggest that indeed, the board of education would have the right at that point to go into executive session to protect itself, assuming now that there is, that the appropriate forum goes beyond that of a board of education.

pat

003887
111

House of Representatives

Wednesday, May 1, 1991

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. The appropriate forum initially would be the board of education in order to exhaust all remedies before an appeal to the State Board of Education. That being the case, could the local board of education go into executive session for the purpose of discussing whether or not it should grant relief short of a full hearing, or under the possibility of a complaint. Through you, Mr. Speaker.

DEPUTY SPEAKER MARKHAM:

Representative Kiner.

REP. KINER: (59th)

Mr. Speaker, as I read the amendment literally, the action would have to result, the ultimate action would have to result in the town or in this particular, in this case with this parent going to another forum above and beyond the board of education.

It would seem to me, using the verbiage of the case the Ridgefield case, the judge in that case said that using the courts should not be a situation of first resort. It should be of last resort, and we should give the towns every opportunity possible to resolve the problem before it goes to litigation.

Since this amendment I believe is patterned after the Ridgefield case, my gut feelings, through you, Mr.

pat

House of Representatives

Wednesday, May 1, 1991

Speaker, and I would defer to any attorney here who could perhaps define this better, that this would allow the board of education to go into executive session.

REP. RADCLIFFE: (123rd)

And through you, Mr. Speaker, my understanding of the --

DEPUTY SPEAKER MARKHAM:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

My understanding of the Ridgefield case was that at several points in the written communication and it was not really a notice, specifically, it was a letter or written communication, it was stated that we believe that certain relief should be granted. We don't wish litigation, perhaps with verbiage that said bringing this matter to court will add to the inconvenience or the expense of all of the parties. I believe that was the nature of the communication and the court in fact held that that that communication would allow for an executive session because of the possibility of litigation.

Would this amendment change the ability of the board to go into executive session under those cases, under the case of Board of Education of Ridgefield versus Freedom of Information Commission. Through you,

pat

House of Representatives

Wednesday, May 1, 1991

Mr. Speaker. Would that still be good law?

REP. KINER: (59th)

Through you, Mr. Speaker, for legislative intent and to the best of my ability, the answer to the gentleman's question. The amendment is being put, indeed the bill, is being put before us so that we cannot at a later time broaden Ridgefield.

I believe what the amendment does is put the court's decision basically, into statute. Through you, Mr. Speaker.

DEPUTY SPEAKER MARKHAM:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Just two final questions, Mr. Speaker. Under the new section h of the amendment, pending litigation, where it talks about bringing an action to court, let's take the situation of a letter to a building official saying there is a violation of the zoning laws in such and such an area and we are requesting that you issue the appropriate order, and if you don't we're going to pursue all remedies available to us.

Now, one of those remedies might be a writ of mandamus, if it is not a discretionary act, but something that's mandatory. Would the language pursue all available remedies, one of which was a lawsuit,

pat

House of Representatives

Wednesday, May 1, 1991

under those circumstances, allow for the entry into executive session of a municipal agency to discuss such a communication. Through you, Mr. Speaker.

DEPUTY SPEAKER MARKHAM:

Representative Kiner.

REP. KINER: (59th)

Mr. Speaker, my interpretation of the amendment is to indicate yes, that indeed an executive session would be allowed to discuss the possibility of such litigation. And I'm referring, I think, if I understand the Representative's question correctly, to lines 106 and 107 which would allow the agency to enforce legal relief or a legal right that that agency has and in using the example, that Representative Radcliffe just stated to the Chamber, I would say that lines 106 and 107 should be able to trigger the executive session. Through you, Mr. Speaker.

REP. RADCLIFFE: (123rd)

And therefore, through you, Mr. Speaker, under that example, the building official would then go to the zoning board of appeals and say, look, there's a possible lawsuit here, I'm going to have to issue the cease and desist order. Through you, Mr. Speaker.

REP. KINER: (59th)

Mr. Speaker, all I can respond to that is, there

pat

House of Representatives

Wednesday, May 1, 1991

are a host of scenarios that can follow that. And that's one of the scenarios, so be it. I just don't have the ability, Mr. Speaker, to gaze into my crystal ball and indicate what would happen if X, Y and Z and so forth were to happen.

I think I answered the question to the best of my ability. The Speaker's question was, given the scenario that he indicated to me, would the agency be allowed to go into executive session. I indicated yes and I think that's perhaps the best I can answer, Sir.

REP. RADCLIFFE: (123rd)

Alright. Through you, Mr. Speaker, let's take another example of a defective highway in a municipality where a notice must be filed within a particular time according to statute. That notice is filed with the municipal clerk. It then becomes the possibility because that is a prerequisite, for bringing an action under the defective highway statute. It then poses, by virtue of its filing, the possibility of legal action somewhere down the line.

Through you, Mr. Speaker, would the filing of that notice allow the town attorney to go into executive session with the common council or with the board of finance to discuss that, knowing that litigation might flow from the filing of that notice.

REP. KINER: (59th)

Everybody's saying yes. Mr. Speaker. Mr. Speaker, again, through you, not to take this question lightly, I would again say yes, that would indeed allow the agency to do that, Sir.

REP. RADCLIFFE: (123rd)

Mr. Speaker, through you, I don't ask the question lightly. I think it would be a very difficult situation if a notice such as that were filed, claiming a defective highway statute, that the town perhaps could lessen its liability, particularly if the town or the city were self-insured and that the town attorney wished to discuss that matter with the budgetary arm at that point and was told no, since this is simply a notice of defective highway, there's no lawsuit actually pending. There's no claim actually pending other than this notice. You have to discuss this in the clear light of day.

Through you, Mr. Speaker, I would hope the proponent of the amendment would agree that that would be a rather untenable situation from the standpoint of the municipality. Through you, Mr. Speaker.

REP. KINER: (59th)

Mr. Speaker what we're trying to do in this amendment is simply protect the rights of the citizen

House of Representatives

Wednesday, May 1, 1991

to know what their government is doing in the open, and yet, Mr. Speaker, we are also trying to strike a balance here in allowing the municipality to use Representative Radcliffe's example to allow the municipality the ability to sit down in executive session without the need of having to go to court.

Quite obviously, I believe we're defining the words pending litigation to mean the examples, I believe that Representative Radcliffe is giving to us. I would define those as pending litigation, and as such, I would indicate that that balance has been struck and to protect the town, there would indeed be the ability for the town to indeed go into executive session.

Mr. Speaker, I ultimately would suggest that that's why we have courts of law. That's why we have the FOI Commission. Perhaps some of the answers that I'm giving to the gentleman I hope are correct. Perhaps they're not. Perhaps the time will come when these particular questions indeed will be reality and indeed will have to be litigated.

But at this point in time what I'm suggesting to Representative Radcliffe is that using his examples, the town would be able to go into executive session.

REP. RADCLIFFE: (123rd)

Thank you, Mr. Speaker. And again, through you,

I'd like to indicate that the question is not asked frivolously, but we use the word pending litigation, the word litigation is used. That might imply that a lawsuit or a legal action was actually pending before an agency.

In the example which I gave, the only thing pending would be a notice to the municipal clerk which would be a prerequisite for the institution of that action, and I believe if I understand the gentleman's question correctly under these circumstances, that particular notice would allow municipal officials to discuss that matter in executive session even though the lawsuit itself had not been filed but because in fact litigation could flow from that notice.

As I understand the gentleman's question, that's what he's saying and I would certainly not wish the word litigation for purposes of legislative intent, to be used so narrowly that it would prevent a town attorney from consulting with his clients in the absence of an actual lawsuit in a situation such as that.

One further question, if I may, and on a related matter, through you, Mr. Speaker, a board of tax review. Many municipalities are going through revaluation at this time. A board of tax review has a

pat

House of Representatives

Wednesday, May 1, 1991

request before it to lower its, lower the assessed valuation and perhaps receives a communication that says that we intend to take an appeal unless this relief is granted.

May the board of tax review go into executive session before rendering its final decision? Through you, Mr. Speaker.

DEPUTY SPEAKER MARKHAM:

Representative Kiner.

REP. KINER: (59th)

Through you, Mr. Speaker, does the gentleman anticipate action on this particular case? Will the person involved institute action unless the board of tax review in this case, were to decide not in his favor.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker, let me pose it this way. A letter is received by the board of tax review indicating that should some relief of this assessment not be granted, we will take all appropriate action. Appropriate action in this case, pursuant to the administrative procedure act would be an appeal to the superior court.

Through you, Mr. Speaker, does the receipt of that letter trigger the possibility of an executive session

pat

House of Representatives

Wednesday, May 1, 1991

to discuss relief in the manner which would avoid a lawsuit?

REP. KINER: (59th)

Through you, Mr. Speaker, using the gentleman's scenario once more, it would seem to me as though what we'd be triggering is pending litigation and at that point, I would say the written notice criteria has been followed. This person is demanding legal relief, and he intends to proceed further to superior court if that relief isn't granted.

Using those three criteria, I would say indeed, our definition of pending litigation would kick in here. Through you, Mr. Speaker.

REP. RADCLIFFE: (123rd)

Well, then, through you, Mr. Speaker, under those circumstances that letter is merely the threat or the possibility of legal action. Through you, Mr. Speaker, then it is the intent of this amendment that a written communication indicating the threat or the possibility or perhaps the probability of litigation is sufficient to trigger an executive session. Through you, Mr. Speaker.

REP. KINER: (59th)

Through you, Mr. Speaker, the answer is indeed, yes. As I read the amendment, the gentleman has

pat

House of Representatives

Wednesday, May 1, 1991

articulated very well the definition of pending litigation which would trigger an executive session.

REP. RADCLIFFE: (123rd)

Then through you, Mr. Speaker, can the Chairman of the GAE Committee enlighten me as to what this amendment does that the Supreme Court has not already done in the case of Board of Ridgefield versus Freedom of Information Commission, because as I understand it, that was precisely the court's holding.

REP. KINER: (59th)

Through you, Mr. Speaker, I indicated earlier that we're basically, it's my impression, at least these were the words I used earlier, was indeed that we were codifying, in effect, the Ridgefield case.

The purpose of the amendment and the bill is to prevent any broadening of what pending claims or pending litigation might mean. So as such, the gentleman is absolutely correct. We are indeed, I believe at least, putting into legislation, putting into statute, what the other justices did in Ridgefield.

Again, I would stress and state again for the record, the fear of the FOIC was future cases coming down where the courts might broaden the definition and close off public forums to the public and the purpose

pat

House of Representatives

Wednesday, May 1, 1991

of this amendment and this bill is to avoid such a thing from occurring. Through you, Mr. Speaker.

REP. RADCLIFFE: (123rd)

Well, through you, Mr. Speaker, as I understand it, the Freedom of Information Commission took quite a different approach in this particular case. The Freedom of Information Commission took the approach that since the letter or the communication in that matter only threatened litigation, that it wasn't a lawsuit itself, but it only raised the possibility of litigation, that it wasn't covered by executive session.

The Supreme Court didn't agree. Based on the answers I've just received, I understand that the Chairman of the GAE Committee also does not agree and what we're essentially doing is saying that the Freedom of Information Commission when it adopted a very narrow interpretation of pending litigation and the Supreme Court said they were incorrect, were essentially agreeing with the Supreme Court. Through you, Mr. Speaker.

REP. KINER: (59th)

Through you, Mr. Speaker, as a matter of fact, the gentleman is using some of the verbiage from the Ridgefield case, saying that the definition offered by

pat

House of Representatives

Wednesday, May 1, 1991

FOIC was indeed too narrow.

REP. RADCLIFFE: (123rd)

Thank you, Mr. Speaker.

DEPUTY SPEAKER MARKHAM:

The Speaker would just point out to the membership that protracted question and answer periods are not necessarily the place on the floor, that debate and making a point certainly is in this Body. I think the gentleman did bring his point to the forefront, but I would caution the members in the future.

Are there further comments on the amendment before us? Representative Langlois of the 51st.

REP. LANGLOIS: (51st)

Yes, thank you, Mr. Speaker. Just several questions and I'll try to be brief. On lines 106 and 107 where it identifies pending litigation as the agency's consideration of action to enforce or implement legal relief or a legal right, would the consideration by a planning and zoning commission as to whether or not to order a cease and desist order, would that be properly held in executive session under this amendment?

REP. KINER: (59th)

If the agency were contemplating a situation where ultimately the superior court would have to decide the

pat

House of Representatives

Wednesday, May 1, 1991

case, then again, I would say to prevent that from occurring, again, to use the court's phraseology, not wanting litigation to be first resort but rather the last resort, I would say to Representative Langlois that indeed, using that scenario, the executive session could be held.

REP. LANGLOIS: (51st)

And through you, Mr. Speaker, one more question. What about a planning and zoning commission's consideration of a zone change or a routine zoning approval where it's a consideration of an action to implement a legal right. Would that be able to be held in an executive session?

Quite frankly, I don't see how the court, the ultimate disposition in a court is contained in the language. It seems to me like the subsection 3 stands alone.

DEPUTY SPEAKER MARKHAM:

Was that a question, Sir.

REP. LANGLOIS: (51st)

Yes, through you.

DEPUTY SPEAKER MARKHAM:

Representative Kiner.

REP. KINER: (59th)

Through you, Mr. Speaker, I think the gentleman's

pat

125

House of Representatives

Wednesday, May 1, 1991

referring to purely a legislative action on the part of the agency and nothing that indeed is adjudicatory and as such, using that example, I would say that executive session would not be allowed in that particular case.

REP. LANGLOIS: (51st)

Thank you, Representative Kiner. So if I'm to correctly interpret this bill then, the legal right or the reference to the legal right on line 107 does not mean the ordinary functions of a planning and zoning commission, nor the ordinary functions of an inland-wetlands commission.

If it did, I would have to oppose this bill because that would virtually cause all of the P & Z sessions and inland-wetlands sessions to be held, or to be able to be held in executive session. That being the case, I would support the amendment.

DEPUTY SPEAKER MARKHAM:

Will you remark further on House Amendment Schedule "A"? Representative Belden of the 113th for the second time.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. If I might, just so, as I understand the new language in the amendment starting on line 99 to 107, that the way it's written that either sub 1, sub 2 or sub 3 each stand by and of

pat

House of Representatives

Wednesday, May 1, 1991

themselves, and so in any consideration that would occur, it could be any of those three for reasoning.

Through you, Mr. Speaker, to Representative Kiner, is that a reasonable assumption.

DEPUTY SPEAKER MARKHAM:

Representative Kiner.

REP. KINER: (59th)

Through you, Mr. Speaker, indeed it is.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. Mr. Speaker, following along that line, in sub 3, would through you, Mr. Speaker to Representative Kiner, would you consider that legal relief or a legal right would include the defense of a potential legal action without benefit of written notification.

REP. KINER: (59th)

Through you, Mr. Speaker.

DEPUTY SPEAKER MARKHAM:

Representative Kiner.

REP. KINER: (59th)

I would say no. Number 3 is really the flip side, if you will, of sub 1. If the agency is going to be defending itself, what we're saying in the bill, and again to use the words I've used before, we want to strike a balance. We don't want the agency to simply

pat

House of Representatives

Wednesday, May 1, 1991

say, hey, we're going to be sued, and not have any written notice before it and simply allow that agency to go into executive session and really go against the public's right to know.

So I would say, through you, Mr. Speaker, that in this particular case, where an agency is thinking that it might be sued, it can go on thinking to it's heart's content but cannot go into executive session until indeed the definition of pending litigation has been triggered by a written notice.

DEPUTY SPEAKER MARKHAM:

Representative Belden, one moment.

REP. BELDEN: (113th)

Thank you, Mr. Speaker.

DEPUTY SPEAKER MARKHAM:

(Gavel) Please proceed.

REP. BELDEN: (113th)

Following on those same lines, Mr. Speaker, if in fact under current language sub 10, line 166 of the amendment before us, counsel for the agency writes a letter to the agency and says, under this particular issue I feel that there's the potential of a lawsuit, I'm under sub 10 which deals with attorney client relationships.

If the attorney for the agency sends a letter to

pat

003904
128

House of Representatives

Wednesday, May 1, 1991

the agency that indicates that there is potential for litigation to be implemented against that agency, could then under attorney client privilege, the agency go into executive session to discuss the written communique from counsel as it might relate to some actions of the board to defend itself against some potential action.

REP. KINER: (59th)

Through you, Mr. Speaker, would the gentleman please tell me what lines he's reading the attorney client relationship privilege on?

REP. BELDEN: (113th)

Through you, Mr. Speaker, line 166 through, it's really on line 167 and 168 of the amendment. Indicates that attorney client relationship is privileged.

REP. KINER: (59th)

Through you, Mr. Speaker, I can't answer that. I'm not sure how the courts and how FOIC have defined communications privileged by attorney client relationship. I don't believe we're talking about the same category here.

What we do not want to see happen is simply the agency go into executive session because they have the desire to do so. However, if looking at lines 167, if indeed the communication is privileged, then indeed

pat

House of Representatives

Wednesday, May 1, 1991

they can go into executive session.

But, it would seem to me that they would have to then prove this to FOIC that indeed that communication was privileged, and I'm not too sure as I indicated earlier, through you, Mr. Speaker, how FOIC defines those communications. But again, it would be determination made by FOIC.

DEPUTY SPEAKER MARKHAM:

Representative Belden, you have the floor.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. I think that's the key to this whole issue. I just can't come up with a way, reading the file, where an agency has the ability or the right in private, to defend itself, or to prepare to defend itself against some litigation that may be coming at them because there is no written document in their hands.

And for the record, what I'm trying to establish, that if in fact the attorney for an agency in writing, sends a letter that indicates that they feel there is a potential of legal action to be taken against that agency, or that that agency should take some particular action in order to prepare itself for a defense in litigation, it could be impending based on some incident or activity that had taken place, that that

pat

House of Representatives

Wednesday, May 1, 1991

could be protected under FOI.

I don't see it here. I didn't get an answer to that question, so I still can't feel how I can vote for this bill, and I really feel that the agencies are really going to have their hands tied when it comes to attempting to defend themselves, or prepare to defend themselves against potential legal actions.

DEPUTY SPEAKER MARKHAM:

Will you remark further on the amendment?

REP. KINER: (59th)

Mr. Speaker.

DEPUTY SPEAKER MARKHAM:

Representative Kiner of the 59th for the second time.

REP. KINER: (59th)

Just in response to Representative Belden's question, in response to Representative Belden's remarks, it would seem to me that without the amendment, that the hands of the agencies would be tied even more.

I don't know how else to state this, Mr. Speaker, but indeed, a lot of work went into this amendment by some people who understand FOIC, and indeed the thrust of what was attempted here was to strike that balance.

It's my impression, Mr. Speaker, that if this

pat

House of Representatives

Wednesday, May 1, 1991

amendment were to fail, if the bill were to fail, then the agencies could conceivably have a more difficult time going into executive session, and again, Mr. Speaker, all we're attempting to do here I believe, is strike that balance.

DEPUTY SPEAKER MARKHAM:

Will you remark further on the amendment? Will you remark further? If not, let's try your minds. Those in favor of House Amendment Schedule "A" please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER MARKHAM:

Opposed, nay. The ayes have it. The amendment is adopted and ruled technical.

House Amendment Schedule "A".

Strike everything after the enacting clause and insert the following in lieu thereof:

"Section 1. Section 1-18a of the general statutes is repealed and the following is substituted in lieu thereof:

As used in this chapter, the following words and phrases shall have the following meanings, except where such terms are used in a context which clearly indicates the contrary:

(a) "Public agency" or "agency" means any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution,

pat

House of Representatives

Wednesday, May 1, 1991

bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official, and also includes any judicial office, official or body or committee thereof but only in respect to its or their administrative functions.

(b) "Meeting" means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power. "Meeting" shall not include: Any meeting of a personnel search committee for executive level employment candidates; any chance meeting, or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business; strategy or negotiations with respect to collective bargaining; a caucus of members of a single political party notwithstanding that such members also constitute a quorum of a public agency; an administrative or staff meeting of a single-member public agency; and communication limited to notice of meetings of any public agency or the agendas thereof. "Caucus" means a convening or assembly of the enrolled members of a single political party who are members of a public agency within the state or a political subdivision.

(c) "Person" means natural person, partnership, corporation, association or society.

(d) "Public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

(e) "Executive sessions" means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (1) Discussion concerning the appointment, employment, performance,

evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting; (2) strategy and negotiations with respect to pending claims [and] OR PENDING litigation to which the public agency or a member thereof, because of his conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled; (3) matters concerning security strategy or the deployment of security personnel, or devices affecting public security; (4) discussion of the selection of a site or the lease, sale or purchase of real estate by a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would cause a likelihood of increased price until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; and (5) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-19.

(f) "Personnel search committee" means a body appointed by a public agency, whose sole purpose is to recommend to the appointing agency a candidate or candidates for an executive-level employment position. Members of a "personnel search committee" shall not be considered in determining whether there is a quorum of the appointing or any other public agency.

(g) "PENDING CLAIM" MEANS A WRITTEN NOTICE TO AN AGENCY WHICH SETS FORTH A DEMAND FOR LEGAL RELIEF OR WHICH ASSERTS A LEGAL RIGHT STATING THE INTENTION TO INSTITUTE AN ACTION IN AN APPROPRIATE FORUM IF SUCH RELIEF OR RIGHT IS NOT GRANTED.

(h) "PENDING LITIGATION" MEANS (1) A WRITTEN NOTICE TO AN AGENCY WHICH SETS FORTH A DEMAND FOR LEGAL RELIEF OR WHICH ASSERTS A LEGAL RIGHT STATING THE INTENTION TO INSTITUTE AN ACTION BEFORE A COURT IF SUCH RELIEF OR RIGHT IS NOT GRANTED BY THE AGENCY; (2) THE SERVICE OF A COMPLAINT AGAINST AN AGENCY RETURNABLE TO A COURT WHICH SEEKS TO ENFORCE OR IMPLEMENT LEGAL RELIEF OR A LEGAL RIGHT; OR (3) THE AGENCY'S CONSIDERATION OF ACTION TO ENFORCE OR IMPLEMENT LEGAL RELIEF OR A LEGAL RIGHT.

[(g)] (i) A quorum of the members of a public agency who are present at any event which has been noticed and conducted as a meeting of another public agency under the provisions of this chapter shall not be deemed to be holding a meeting of the public agency of which they are a member as a result of their presence at such event.

Sec. 2. Subsection (b) of section 1-19 of the general statutes is repealed and the following is substituted in lieu thereof:

(b) Nothing in sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, shall be construed to require disclosure of (1) preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure; (2) personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy; (3) records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known, (B) information to be used in a prospective law enforcement action if prejudicial to such action, (C) investigatory techniques not otherwise known to the general public, (D) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (E) the name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof or (F) uncorroborated allegations subject to destruction pursuant to section 1-20c; (4) records pertaining to strategy and negotiations with respect to pending claims [and] OR PENDING litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled; (5) trade secrets, which for purposes of sections 1-15, 1-18a, 1-19 to 1-19b, inclusive, and 1-21 to 1-21k, inclusive, are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating or

pat

House of Representatives

Wednesday, May 1, 1991

processing of articles or materials which are trade commodities obtained from a person and which are recognized by law as confidential, and commercial or financial information given in confidence, not required by statute; (6) test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations; (7) the contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned, provided the law of eminent domain shall not be affected by this provision; (8) statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with such licensing agency to establish his personal qualification for the license, certificate or permit applied for; (9) records, reports and statements of strategy or negotiations with respect to collective bargaining; (10) records, tax returns, reports and statements exempted by federal law or state statutes or communications privileged by the attorney-client relationship; (11) names or addresses of students enrolled in any public school or college without the consent of each student whose name or address is to be disclosed who is eighteen years of age or older and a parent or guardian of each such student who is younger than eighteen years of age, provided this subdivision shall not be construed as prohibiting the disclosure of the names or addresses of students enrolled in any public school in a regional school district to the board of selectmen or town board of finance, as the case may be, of the town wherein the student resides for the purpose of verifying tuition payments made to such school; (12) any information obtained by the use of illegal means; (13) records of an investigation or the name of an employee providing information under the provisions of section 4-61dd; (14) adoption records and information provided for in sections 45a-746 and 45a-750; (15) any page of a primary petition, nominating petition, referendum petition, or petition for a town meeting submitted under any provision of the general statutes or of any special act, municipal charter or ordinance, until the required processing and certification of such page has been completed by the official or officials charged with such duty after which time disclosure of such page shall be required.

pat

House of Representatives

Wednesday, May 1, 1991

Sec. 3. This act shall take effect from its passage."

DEPUTY SPEAKER MARKHAM:

Will you remark further on the bill as amended?

Will you remark further?

REP. KRAWIECKI: (78th)

Mr. Speaker.

DEPUTY SPEAKER MARKHAM:

Representative Krawiecki of the 78th.

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker. I want to ask a couple of questions that I guess have been precipitated by the last go around.

DEPUTY SPEAKER MARKHAM:

Frame your question, Sir.

REP. KRAWIECKI: (78th)

And I hadn't thought of it in advance, but given the language, Representative Kiner, in lines 106 and 107, specifically in line 107 that says an agency's consideration of action to implement legal relief. Now, I'm focusing on implementing legal relief. If I'm a planning commission or a zoning commission or any other commission and I've got a let's say a bad sand pit operator and I don't know, and I don't know what I

pat

House of Representatives

Wednesday, May 1, 1991

can do to penalize that guy from carrying on the operation that he's got. If the board says, Mr. Secretary of the board, I want you to write a letter to the corporation counsel, the lawyer for the town, ask that person to report back to me the legal remedies that we can follow to shut that operation down or alter that operation under the permitting process and the corporation counsel replies in writing, with the legal remedies, the legal relief that you can proceed under, is that now exempted under number 3? Dealing with the language that says the agency can exempt consideration of action to implement legal relief?

Through you, Mr. Speaker. And through you, Mr. Speaker, if not, why not?

REP. KINER: (59th)

Mr. Speaker, I believe the answer is no. And in response to the gentleman's why not, I would, I believe, refer to line and to Representative Belden, I believe mentioned this in some of his comments, lines 167. I would believe that that would fall under communications privileged by the attorney-client relationship.

But again, through you, Mr. Speaker, that's my interpretation. It might indeed be wrong, and if it is, or if it is not, ultimately that kind of a scenario

pat

138

House of Representatives

Wednesday, May 1, 1991

could very well find its way through FOIC and FOIC will make that decision.

But I would say the attorney-client relationship should cover that particular scenario.

REP. KRAWIECKI: (78th)

So, through you, Mr. Speaker, your answer is yes.

REP. KINER: (59th)

Through you, Mr. Speaker, I believe it's already covered in law. I don't believe this amendment is doing anything in that particular situation. I believe we're already covered as indicated in section 119 of the amendment, lines 167, thereabouts.

REP. KRAWIECKI: (78th)

Thank you, Representative Kiner. I would suspect that others, certainly those at the FOIC Commission may not agree with that last interpretation, but I guess I'm going to operate on the presumption that because the Commission requested in writing specific legal advice from their lawyer, and the reason that they do it is because they are seeking to implement whatever appropriate legal relief or legal right might be available to them, that that information would be exempted and I'm not quite sure that that's exactly what you intended with that amendment, but I think that's how you've got to read it at this point and I'm

pat

House of Representatives

Wednesday, May 1, 1991

not sure we won't be back here again trying to deal with the same problem.

So thank you, Representative Kiner.

DEPUTY SPEAKER MARKHAM:

Will you remark further on the bill as amended? Will you remark further? If not, staff and guests please come to the well of the House. Members take your seats. The machine will be opened.

CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting by roll call. Members to the Chamber, please.

DEPUTY SPEAKER MARKHAM:

Have all members voted? Have all members voted? Have all members voted? Please check the roll call machine to see that your vote is properly cast. The machine will be locked. The Clerk please take a tally.

The Clerk please announce the tally.

CLERK: SPECIAL MESSAGES

pat

003916
140

House of Representatives

Wednesday, May 1, 1991

House Bill 7046 as amended by House Amendment
Schedule "A".

Total number voting	144
Necessary for passage	73
Those voting yea	144
Those voting nay	0
Those absent and not voting	7

DEPUTY SPEAKER MARKHAM:

The bill as amended is passed. Are there any
announcements or points of personal privilege at this
time? Representative Rennie of the 14th.

REP. RENNIE: (14th)

Thank you, Mr. Speaker, for an introduction.

DEPUTY SPEAKER MARKHAM:

Please hold it, Representative Rennie. (Gavel)
Representative Rennie.

REP. RENNIE: (14th)

Thank you, Mr. Speaker, for an introduction.

DEPUTY SPEAKER MARKHAM:

Please proceed, Sir.

REP. RENNIE: (14th)

An introduction that is intended to gladden the
hearts of those legislators who traced their roots to
the Emerald Isle. Visiting us today from the old sod
is, are two visitors from Tullamore County in Ireland,

S-318

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1991

VOL. 34
PART 5
1514-1901

WEDNESDAY
May 8, 1991

001632

70
aak

SENATOR MEOTTI:

I move this be placed on the Consent Calendar.

THE CHAIR:

Thank you very much. Is there any there any objection to placing Senate Calendar 357, Substitute HB6936 on the Consent Calendar? Is there any objection? Hearing none, it is so ordered.

THE CLERK:

Calendar 360, Files 411 and 583, Substitute HB7046, AN ACT CONCERNING PENDING CLAIMS AND LITIGATION UNDER THE FREEDOM OF INFORMATION ACT. As amended by House Amendment Schedule "A". Favorable Report of the Committee on GOVERNMENT ADMINISTRATION AND ELECTIONS.

THE CHAIR:

The Chair will recognize Senator Herbst.

SENATOR HERBST:

Thank you, Madam President. I move the Joint Favorable Committee's Report in concurrence with House Amendment Schedule "A".

THE CHAIR:

Thank you very much, Senator. Do you wish to remark further?

SENATOR HERBST:

Basically what House Amendment "A" was to further define pending claim and pending litigation and

WEDNESDAY
May 8, 1991

71
aak

basically what the bill is about is just that. The definition of a pending claim or pending litigation indicating that Executive Sessions cannot be held unless the definition for either pending claim or litigation is followed according to the law's definition.

THE CHAIR:

Thank you very much, Senator. Would someone else wish to comment on this bill? Are there any further remarks on this bill? Any further remarks? If not, Senator Herbst.

SENATOR HERBST:

If there are no further comments or remarks I would like to place this on the Consent Calendar.

THE CHAIR:

Is there any objection to placing Calendar 360, Substitute HB7046 on the Consent Calendar? Is there any objection? Hearing none, it is so ordered.

THE CLERK:

Calendar Page 16, Calendar 362, Files 240 and 579, Substitute HB7164, AN ACT CONCERNING THE DISCLOSURE OF PRIVILEGED COMMUNICATIONS AND INFORMATION BETWEEN PHYSICIAN AND PATIENT. As amended by House Amendment Schedule "A". Favorable Report of the Committee on PUBLIC HEALTH. The Clerk is in possession of one

WEDNESDAY
May 8, 1991

001690

128
aak

THE CLERK:

Immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber. Immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

The issue before the Chamber is the Consent Calendar #2 for the day, May 8th, 1991. Mr. Clerk, would you please read the items that have been placed on Consent Calendar #2.

THE CLERK:

The second Consent Calendar begins on Calendar Page 9, Calendar 262, Substitute SB699. Calendar 277, Substitute SB234. Calendar Page 10, Calendar 290, Substitute HB7146. Calendar Page 11, Calendar 306, Substitute SB860. Calendar Page 15, Calendar 357, Substitute HB6936. Calendar 360, Substitute HB7046. Calendar Page 16, Calendar 362, Substitute HB7164.

Calendar Page 17, Calendar 378, HB7357. Calendar Page 18, Calendar 381, Substitute HB6055. Calendar Page 22, Calendar 160, correction, SB874. Calendar 167, SB201. Calendar 354, SR31. And from the second Agenda, Agenda #2, HB5578. Madam President, that completes the second Consent Calendar.

WEDNESDAY
May 8, 1991

001691
129
aak

THE CHAIR:

Thank you very much. You have heard the items placed on the Consent Calendar #2 for today. The machine is open. Would you please record your votes. The machine is closed.

The result of the vote.

35 Yea

0 Nay

1 Absent

The Consent Calendar is adopted.

Senator O'Leary.

SENATOR O'LEARY:

Thank you, Madam President. Madam President, I move to transmit to the Governor the HB5578 on Senate Agenda #2.

THE CHAIR:

Thank you very much, Senator. Motion to transmit to the Governor HB5578. Is there any objection? Any objection? Hearing none, it is so ordered. The Chair recognizes Senator Harper.

SENATOR HARPER:

Thank you, Madam President. I rise for purposes of an announcement. The Appropriations Committee will meet tomorrow morning in Room 2C at 11:30 a.m. to take up several bills that were referred from the House.

JOINT
STANDING
COMMITTEE
HEARINGS

GOVERNMENT
ADMINISTRATION
AND ELECTIONS

PART 1

1-322

1991

INDEX

REP. KINER: Now I know we have problems.

MITCHELL PEARLMAN: One more bill, please. HB7046, AN ACT CONCERNING PENDING CLAIMS AND LITIGATION UNDER THE FREEDOM OF INFORMATION ACT. This bill is designed to cure another problem that the Supreme Court, in a recent decision involving the Ridgefield Board of Education caused, by interpreting the pending claims and litigation purpose for going to executive session as really meaning impending claims whenever there's, potentially, whenever there's a mere threat of litigation.

Basically, the approach that we've suggested in this legislation would be to codify as the extent of the law, what that decision says. By defining pending claims and litigation as really impending claims or litigation to the extent that the agency has received a written demand for legal relief evidencing the intention to institute imminently a claim or litigation before a quasi-judicial body of such relief is not granted by the agency.

So it opens the door a bit, but it cannot be used if somebody wants to get around the open meetings law by saying, oh, I'll sue, clear the room. And we will have, without that limitation essentially an illusory open meetings law. Thank you very much.

REP. KINER: Thank you, Mr. Pearlman. Jack Kelly followed by Senator Steven Spellman.

CHIEF STATE'S ATTY. JOHN KELLY: Good afternoon. I'm John Kelly representing the Division of Criminal Justice. I, too, am a lawyer, but I'll try to be brief. The first bill I'd like to testify on concerns SB683, AN ACT CONCERNING COMPUTER STORED PUBLIC RECORDS. The Division of Criminal Justice vehemently opposes this proposal. It appears that this is a poorly veiled effort to expand the authority of the Freedom of Information Commission into an area where it has no right.

That Commission, by statute, is an administrative, adjudicative entity. To attempt to expand it's authority into the computer area of state and local

only to those persons who have been arrested who's cases are pending in court, where there are established discovery rules that the judges oversee.

And all we're saying is this proposal would ensure that there's no dispute in this area. That the court rules have to prevail to protect the rights of the defendant under a document many of us still remember called the United States Constitution and the Connecticut Constitution. I'm available for any questions.

REP. KINER: Thank you, Jack.

CHIEF STATE'S ATTY. JOHN KELLY: Thank you. I hope I was brief.

REP. KINER: We still have 2 minutes left, Senator Spellman. Are you a lawyer, too, Senator Spellman?

SEN. SPELLMAN: Yes, Representative, but I'm one of those rare lawyers who can get his message in in two minutes. I'd like to speak in favor of Raised HB7046. I think the first thing that occurs to me in regard to this bill is the system of checks and balances that we were all taught as civics in grade school and high school. But usually when you think of that you think of the Legislature controlling the Executive and the Judiciary controlling the Legislative actions.

But I see a disturbing trend in regard to decisions by our Connecticut Supreme Court that are limiting what I felt was a very clear and historic directive by the General Assembly when we adopted the Sunshine Laws, indicating that any decisions involving governmental processes that are affecting people will be conducted in the open so that you can see what's happening and you can participate. If there's a failure on the Legislative part, it's perhaps that we did not define every place that we should have in order to protect that interest.

And I think with this piece of legislation we have an opportunity to reassert the goals that we were pursuing when we adopted that initial piece of legislation. Certainly we don't want a situation where anyone who raises the threat of litigation

can remove from public scrutiny the governmental processes that are concerned. I would suggest, however, that I don't believe that the proposed language in this bill goes far enough. As an attorney who has had experience as a town attorney representing three different municipalities and two fire districts that have planning and zoning powers, I can tell you that there are a number of circumstances where someone will send you a letter threatening litigation.

And in situations where I often think that they don't have a sincere threat to follow through. Moreover, I think that the intent and purpose of any exception in regard to freedom of information should be for the purposes of settlement of pending litigation. So, I would suggest that when you adopt this bill, which hopefully you will, that you make it depending claims and litigation, not just a letter from an attorney, but service of process upon the applicable agency.

So, that you have actually have something pending before you in terms of litigation that you would be discussing settlement in regard to. Rather than removing the process from public scrutiny because of a written threat rather than an oral threat. That's all I have if there's any questions.

REP. KINER: Thank you, Senator. I don't believe there are any.

SEN. SPELLMAN: Thank you very much, Representative.

REP. KINER: Thank you, sir. The first hour of the public hearing is now over. We'll now go into the second phase of the public hearing. Regina Smith followed by Sid Garvais.

REGINA SMITH: Representative Kiner, and members of the Committee, I did have prepared testimony that I assume has been passed out amongst the legislators and I will make my comment just very brief because I would like to yield as Representative Kiner has suggested to a guest that we brought into this state. And I would just like to say that I am testifying, my testimony is here, and I'm testifying against in opposition to HJ5, and HJ6, constitutional amendments for right to privacy.

serve in public office we may be cutting down on an aspect of the Freedom of Information Commission's job that would better be done by people who are not only required to serve under the FOI Act as all of you are and perhaps some of you even serve on public agencies in your communities or work in the capacity that FOI may control.

I feel that this legislation is unnecessary. I don't intent to run for public office anymore. I have been a public servant for almost 20 years in North Branford and I think it's time for someone younger like my own children to do the job for a while. And perhaps in the future I would want to serve in a dual capacity and would like that freedom. But I really feel we do bring a different philosophy from the members of the press who serve on our commission or the former press members. Also any member of the public who has not been subservient directly to the FOI Act and just would like to encourage you to consider the position that the Commission has taken and I do not seek for just myself, I do speak for the whole Commission. Thank you.

REP. KINER: Thank you Joan. Bob Brown followed by Chris Powell.

BOB BROWN: My name is Bob Brown. I am Editorial Page Editor of the Bristol Press. Previously I served as City Hall reporter in the City of Willimantic and I remember Representative Lescoe when he served on the now defunct Willimantic Common Council. As I recall it, Representative Lescoe was on the Council when the Freedom of Information law was originally passed. I am here today to speak in favor of what I regard as the preservation of the law, specifically to speak in favor of HB7046, AN ACT CONCERNING PENDING CLAIMS OF LITIGATION UNDER THE FREEDOM OF INFORMATION ACT.

Earlier Mr. Garvais spoke willingly of the FOI law. I wish I could agree with his comments regarding his exemplary nature. Perhaps I could have until recently. I can't today, largely because of two recent decisions of the State Supreme Court. In that context I would like to second Senator

Spellman's remarks concerning his concerns about judicial encroachment in matters that are properly legislative.

The first of the Supreme Court decisions dealt with performance of evaluations of public employees. The court effectively declared as I read it that such evaluations can basically be made secret. There is no bill before the Committee dealing directly with that particular decision, however, HB7046 does deal with a second issue, one regarding open meetings. HB7046 was prompted by a State Supreme Court decision which highlighted one of the many ambiguities in the FOI law. Unfortunately in highlighting the ambiguity the court also effectively destroyed a key component of law, access to meetings of public agencies.

An exception to the FOI law since its passage has allowed agencies to exclude the public in discussion, from discussions regarding pending claims in litigations. The court did not in its decision define a pending claim directly. It did not deal with that. It adopted the sort of standard by which I know I judge art and I think most people do, I don't know exactly what it is but I know it when I see it. The court essentially said we will recognize what a pending claim is. Then it ruled that a mere written threat to sue submitted to a public agency was indeed a pending claim, anyone could, in effect, force a meeting to be closed simply by writing that he or she was going to sue a public agency in question.

Since the court did not really define what is a pending claim, it also raised the potential that something else, something further, perhaps even an oral threat to sue could be construed to be a pending claim or litigation. There is great vagueness in the court's decision. HB7046 does take a step toward clarifying exactly what constitutes a pending claim. The language of the bill specifies that there has to be an eminent threat to sue, it has to have been filed with a relative public agency. In other words it can't be a note, a letter, something passed forward that says, listen, if this issue isn't resolved I am going to sue. The potential danger in allowing meetings to be closed so easily is simply that a

board can then convene in executive session without the public being available, without the public being present and can thrash out a policy decision under the guise of attempting to deal with in fact a threat to sue. It can in effect make policy while resolving the threatened lawsuit.

And it seems to me as if that is the first step to basically shutting the public out from meetings on something approaching a whim by just about anyone.

The one purpose of the FOI law is not only to assure that people have access to the action of their government but that they can see their government in operation, that they can watch the process by which the government officials decide and that in watching how they decide they can reach judgments on the performance of those officials. I believe that HB7046 would in some way assure that they can continue to do so. Thank you.

REP. KINER: Thanks Bob. Chris Powell, followed by Will Watson.

CHRIS POWELL: Mr. Chairman, Committee members, my name is Chris Powell, I live in Manchester, I am a newspaper editor. I am just speaking for myself today on these bills that involve what seems to me the big issue of the accountability of government. In regard to the proposed Constitutional amendments, HJ5 and HJ6, I would have to urge you not to proceed with them as they are phrased now because I don't understand what they mean to do. They talk about putting the phrases invasion of privacy and private life into our constitution but I would hope that before that is done the Legislature would tell us what those phrases are to mean.

I am very afraid that if such phrases went into the Constitution without any elaboration the people across the street in the Supreme Court building will be given a blank check to interpret them anyway they want. I have no objection to a Constitutional amendment establishing the right to abortion if that is what this Committee and the General Assembly want to do. I do object to the Legislature's abdicating anymore of its authority

Attorney were here he might confirm that something like 90% or 95% of our criminal cases are resolved prior to trial through probations, plea bargains and things which serve only to conceal the public record, to deprive the public an accounting of criminal acts.

This legislation would pretty much seal up even more things in an area where the public doesn't know as much as it should know already. I urge you not to proceed with that bill.

In regard to HB5528, AN ACT CONCERNING PRIVACY RIGHTS UNDER THE FREEDOM OF INFORMATION ACT. As I read this this bill in establishing this reasonable expectation of privacy standard for freedom of information in effect would abdicate from the General Assembly to all public employees the determination over what sort of information could be known about public employee performance. Again, I see this as an abdication by the Legislature and by the government. This responsibility is yours, it is not the responsibility of public employees to tell the public what the public may know about them. I would urge you to defeat this. I don't understand what the public employees are afraid of. They can't be fired anyway under all practical circumstances. The least they can do is I think give the public a little satisfaction of at least exposing the wrong doing or incompetence in public employment even if we can't do anything about it.

In regard to HB7046, the pending claims bill, I thought Senator Spellman really made the point there if we are going to allow people to exempt government from the FOI act in the open meeting provision simply by the threat of a lawsuit we have lost everything about open government. Certainly this bill, HB7046 is preferable to leaving the Supreme Court decision in Ridgefield in place, but if it could be revised as Senator Spellman suggested to require actual service of legal process I think it would be superior in regard to preserving the public's ability to know something about government.

reporters to gather the kind of information that we need simply to convey rudimentary information about crime and arrests. So we would clearly ask that this one not be considered.

On the ACT CONCERNING COMPUTER STORED PUBLIC RECORDS, SB683, again, access to information has traditionally been by the conveyance of paper. That has been outmoded in recent days by the computer age that we are now in and I think the points have been well made that access should continue to be guaranteed in those areas. There is one other consideration that I don't think anyone has made so far and I would just like to make it for the record. And that is an individual going down now to ask for say a block of information may well be subjected to 50 or 60 pounds of computer paper. And in an age when more increasingly concerned with environmental issues, I think the ecology would be better served by transmission of one small floppy disk than by all of that paper which ends up back in the wastestream. It was worth a try anyway.

Two other issues. On the HB7046, concerning pending claims, clearly an issue under adjudication does already enjoy some protection from public disclosure and we don't seek to change that part of the issue. However we would ask that this committee consider in its resolution of this bill to include that some service must be necessary prior to closing public meetings because the give and take of public bodies and the people who are there is very important to the furtherment of justice and the furtherment of government which should be conducted in the open and unfortunately in all too many cases members of boards and commissions find it far too easy to close doors to the public and to discuss these issues in private. It is more convenient for them. It doesn't subject them to any public review. Their motives may not be totally bad but at the same time it doesn't serve the best public interest. Those are the only bills I have to discuss this afternoon. Thank you very much.

REP. KINER: Thank you. Alan Church followed by Mary Ann Rhyme.

ALAN CHURCH: Good afternoon members of the Committee my name is Alan Church, I am the Editorial Page Editor of the Record Journal. I would like to speak to you to two measures before you, HB5528 and Raised HB7046. Those deal with important questions and positions, portions of our Connecticut Freedom of Information Act, those relating directly to decisions handed down by the Supreme Court last month. The first bill, HB5528, adds a new clause which lists the exceptions to the general rule that public documents should be available to the public and incorporates the precise language of the recent court decision in the Connelly case.

As you probably know the Connelly case involved a personnel evaluation of a state's attorney. When the request was made for that evaluation the Criminal Justice Committee turned it down, claiming an exemption under Section 119b2 for personnel files. The FOIC applied a balancing test to the situation, weighing the public interest against the state's attorney's privacy interests. The Supreme Court, however, provided a new test when it dealt with the matter on appeal. Its new rule suggests that if the public agency for which he or she works have a reasonable expectation of privacy the material in question should not be released.

This is in my view, a test which could put virtually all personnel material out of the public's view. Remember the Connelly case involved a job performance, not an obscure low level employee or middle management bureaucrat. State's attorney is probably one of the most public servants in the state. And they deal on a regular basis of sensitive issues that relate to the public if their performance is protected by some reasonable expectation of privacy.

I would like to see this court decision overruled and a balancing test reinstated. That of course is not what this bill accomplishes. By virtue of the courts decision the reasonable expectation of privacy test is already law. What HB5528 does is add a new section, a new exception to the general rule that public documents should be disclosed. It uses the court's new test and it seems to me that the exception is large enough for all of us to step

inside and be protected from the public forever. I am aware that many people with strong concerns about privacy despite the fact that I work for a newspaper I appreciate the difficulty of working in a goldfish bowl and having everyone's minor sin of omission or commission of public view. There is room for public view. There is room for privacy rights to be protected. What is not clear at present is the shape that protection should take.

It would be my suggestion that this measure, HB5528, along with others relating to privacy be studied and reported on when consensus is reached as the best means of weighing and balancing the expectations of privacy and public interest.

The other bill HB7046 is a direct response to another Supreme Court case, this one involving the Ridgefield Board of Education, a high school literary magazine and the reasons for going into executive session out of public view. Since the early days of FOI public agencies have had available to them a number of solid statutory grounds for going private. Among them the need to discuss pending claims and litigation. Also since the early days of FOI that phrase pending claims and litigation has been interpreted to mean that actual papers have been filed with the court in actual lawsuits commence. So long as it is interpreted this way it remains manageable.

The Supreme Court in the Ridgefield case saw a situation where no suit had actually been filed and chose to extend the definition of pending claims and litigation. In effect the court said we are not sure what pending claims and litigation include but we know one when we see one. It includes this situation and will leave it to others to see how much else the term may mean. Considering our litigious culture, how often we threaten to sue each other, I see a need to keep the definition of pending claims and litigation as tight as possible. That is what HB7846 does, it does not turn back the clock, it uses the language of the Supreme Court and attempts to draw a line for all of us, an impending claim and litigation to the extent an agency has received a written demand and so forth. This is damage control, if you will.

March 1, 1991

The Supreme Court tore a hole in the pending claims and litigation exception that could lead to a rip across the fabric of the FOI law. This definition should reinforce the edges of the definition so that nothing larger than say a school bus can be driven into executive session. It is my hope that HB7046 will receive your favorable attention. Thank you very much.

SEN. MEOTTI: Thank you. For the record I should note that in the absence of the two Co-Chairman, I am invoking the Alex Haig rule and I am in charge here and if they stay away long enough we might start to report out some of those bills of mine which they wouldn't even give public hearings to. Mary Ann Rhyne to be followed by Colleen Murn.

MARY ANN RHYME: Committee members, I am Mary Ann Rhyne, President of Connecticut Council of Freedom of Information and also the bureau chief for Associated Press in Connecticut. For those of you who might not know Associated Press is a not for profit cooperative of newspapers, radio and television stations. My purpose today is to give you some perspective of how government agencies around the country already are making records available via computer as envisioned under SB683. I have gathered this information with the help of some of my AP colleagues around the country.

There are currently five major sources of computer records, the federal government, courts, cities and counties, states and legislatures. At the federal government level there is now a growth of on-line information services from government agencies and even universities. The Census Bureau and the Labor Department, for example, distribute news releases and data by computer. Other participants include agencies ranging from NASA to the National Weather Service.

Among the courts, the U.S. Supreme Court now transmits its opinions to the AP in Washington for distribution electronically to newspapers across the nation. The 6th U.S. Circuit Court of Appeals in Cincinnati and the 9th Circuit in San Francisco offer similar information. In Minnesota the largest county makes available by computer its

district court information. And the 13 largest counties in South Dakota are on a uniform computer system to which the public has access. On the city and county level Arizona county clerks now make available information for governmental election or election campaign purposes.

A variety of states are making records available by computer. Election returns and or campaign finance reports are available by computer in at least a half dozen states including Texas and South Dakota. In South Dakota state officials went so far as to give the returns by computer to the press as well as to political parties and even installed toll free numbers that voters could call to get returns for their favorite candidates. Minnesota's Secretary of State now makes available corporate records and uniform commercial code files. In Arizona the state database is available to the public and the Motor Vehicle database in New York is available for a \$3 sign on fee.

Legislatures have also entered the computer age in many states. States including Minnesota, Texas, Florida and North Dakota have terminals available for the public to access information on bills and their status for free. In summary the computer age is already arrived for many local and state governments across the country. I think it's time that Connecticut citizens could take advantage of these tools also.

SEN. MEOTTI: Thank you. Ed Frede followed by Brent Houston.

ED FREDE: Thank you. I am Ed Frede. I am on the Executive Committee of the Connecticut Council on Freedom of Information and also the Editor of the News Times in Danbury. Ridgefield is in our service area and that is the town where this case involving HB7046 arose. We did not bring the case, Steve Collins who is known to probably many of you on the Committee and who was a major factor in getting FOI in Connecticut had a rule that FOIA was not a crutch for lazy reporters and that is a reason why we have not burdened the FOIC with appeals I think I could count on one hand the number of cases we brought.

This case was brought by the lawyer who threatened to sue the school board, cave in to his demands in settling a case. I don't think the citizens of the State should be burdened with bad decisions made behind closed doors because like the man who yelled fire in the theater when there was no fire, someone can threaten orally or in writing to sue a town to force action that may not be in the best interests of that town.

I urge you to make whole again our Freedom of Information Act by defining what pending claims and litigation mean. Thank you very much.

SEN. MEOTTI: Thank you. Brant Houston to be followed by Dick Conrad.

BRANT HOUSTON: I am Brant Houston, a Reporter from the Hartford Courant and I am speaking on SB683. I am going to focus state records and what I have to say and I hope to offer you little nuts and bolts from why this bill is needed. The bill promotes an efficient open government by mandating the common sense practice of providing information in a least expensive and least time consuming manner. Many state agencies now have the ability to provide public records on computer tape or diskettes. A clerk or manager can go to a computer, hit three or four keys to consistently and completely the confidential portions of those records and deliver a thousand records on a small diskette within a few minutes.

The cost to the State a few minutes of a state employee's time, say about five bucks. And yet many state agencies prefer to have that same state employee spend hours retrieving one thousand sheets of paper, blacking out the confidential information, sometimes sloppily and ineffectively and copying those records to another one thousand sheets of paper. The cost to the State, assuming the employee making \$30,000 spending four hours on the job, about \$50, ten times as much. This raises an interesting question. If providing public information via computer is so much cheaper and efficient, why do so many state managers insist on taking the costlier route? Out of ignorance,

anybody in this room would deny that we are basically a religious country. Many, many different faiths and that is great, I admire them all that are practiced, many different faiths, but still basically a religious country. Our country was established for that purpose. The motto on our currency says, "In God We Trust", and yet a very, very small minority of people in this country and I don't like to throw numbers around but I would guarantee that there is probably less than 2% of our population have been successful in removing totally from the schools any semblance of a reference to God or I should say a prayer and non-denominational, even a silent prayer, this is just not what the Constitution was all about.

Jefferson and Adams and Franklin and these tremendous people who composed this thing must be turning over in their graves with the interpretations we use of it today. They have been able to outlaw that wonderful old tradition in our schools and one that I am sure most of the people in this room would like to see returned, but this is what is happening. And in summary or finalization here, the passage of these amendments, these right to life, I'm sorry, these right to privacy amendments, in my judgment, will simply promote still further this obsession with individual rights without the regard for the general rights of the public.

Also, bear in mind again it can be used to veto some of your very important and dear legislation. I therefore urge the rejection of HJ5 and HJ6 and thank you for your time.

REP. KINER: Thank you Paul. Ben Proto followed by Dania Viola and for the record the Chair would like to state that Senator Herbst is attending a funeral this afternoon for her mother-in-law. Mr. Proto.

ATTY. BEN PROTO: Representative Kiner, members of the Committee, my name is Benjamin Proto, I am the Assistant Town Attorney for the Town of Stratford and I am here to speak in opposition to HB7046, AN ACT CONCERNING PENDING CLAIMS AND LITIGATION UNDER THE FREEDOM OF INFORMATION ACT. There has been a lot of discussion today regarding the Ridgefield Board of Education case and that it was very

unclear, my reading and the reading of the Town Attorney's office and many other attorneys that it was much more clear than what the statute was and it is much, much more clear than what this language provides.

First of all I would like to say that under this language it would seem that if a person were to make an FOI claim to a public agency for documents and as you know the agency has four days to respond and in that letter said if I don't receive these documents I will have no choice but to file an FOI complaint in order to get these documents that could be interpreted as a pending claim which would allow the public agency to go into executive session to discuss whether or not these documents should be given out since they will be seeking some sort of legal relief.

The language seems very unclear. It muddies waters that are in our opinion were cleared up by the Supreme Court. I would also like to speak to what I believe Senator Spellman spoke about. I was not here for that, but listening to some of the other testimony that the language should be strengthened to allow for executive session only to claims that have actually been filed or a suit has actually been brought. What that does and what we believe that this will do would require that the public agency after being notified by letter that legal action may be taken against them if maybe not (inaudible) would require that the agency sit in public session in front of opposing counsel and discuss strategy for that claim, discuss settlement possibilities for that claim, discuss strengths and weaknesses that the public agency may have for that claim.

As an attorney if I were on opposing counsel that would be the mother lode. I would know how that public agency is going to be trying its case if it goes to litigation. As a municipal attorney and with other municipal attorneys regarding this our advice to our public agencies when we receive letters of this is going to be don't do anything, let's wait to get sued and when contacted by opposing counsel we will tell them that we will take no action until you actually serve us with papers.

The public agency, much like you and I need to be able to converse with counsel in a private setting in regards to many of these matters. To take that right away would really hamstring the public agency and in my opinion may cause a breach of the attorneys ethics, ethical responsibilities to that client because that is what that public agency is, it is that attorneys client, the attorney is duty bound to provide confidential advice to that client and it would seem that this would allow the attorney not to do that. So we would oppose this, we think it would really hamstring the ability to settle cases. We were all present when Chief Justice Peters spoke regarding the unbelievable growth in litigation in our courts and this would only further require that more litigation be put forth rather than settling matters and working out settlements with individuals or entities prior to litigation. We would urge the Committee to reject this bill. Thank you.

REP. KINER: Thanks Ben. Dania Viola followed by Henry Keeting. Dania Viola, Henry Keeting, New Britain Herald, maybe I mispronounced your name. Kenneth P., again, I am having difficulty reading the name, representing self and family. Kenneth Kosmierski, talking HJ5 and HJ6. For the record, sir, introduce yourself.

KENNETH KOSMIERSKI: I am Kenneth Kosmierski and I came with my wife and little boy and my friend Susan and her two children and I represent myself and people that feel that same way at my church and a lot of different people that I know. I think the HJ5 and HJ6 amendments of the Constitution would be a big mistake because it would ensure the right to privacy in the Constitution which, right to privacy which I think the right to life is much more valuable and important because life is so precious and so beautiful and I think everybody should have that right. They have a right privacy in Florida and California state constitution. In California because of it everyone, the citizens pay for abortions and in Florida parental consent bill which shows (inaudible) Americans support was shrugged down because of that and also they had a hard time with rape and child pornography, had a hard time prosecuting people as well.

Finally, let me add on that issue, since the issue of privacy has occupied so much of the commission's time today. If the committee opts to study this issue, I would recommend that it also, and this is speaking personally, not for the council in this case because this isn't a position I've cleared with the council. I would recommend that if you're going to do that, you ought to study to see whether this should be a constitutionally protected right to know, beyond the statutory protection. And that's not really a far fetched idea because both the U.S. and our State Supreme Courts in some of its recent rulings, have used language very very close to establishing such a right.

Finally, on the issue of HB7046 pending claims, I think that's been adequately covered by others. I would like to comment on the recent remarks of the Town Attorney, and note that the, he first of all, that the commission had applied, until the supreme court ruled the standard that a suit had to actually be filed before the pending claim exemption applied, and to my knowledge, that did not inhibit instances of towns being able to resolve legal matters. There were cases that came before the commission, but I'm not aware of a documented instance where a town was prevented from settling its legal business, in that context, and I'd further note the law currently provides for closed session discussion of communications privileged by the attorney/client privilege, excuse me, attorney/client relationship.

That's exemption number 10 under Section 119. I believe although the bill that the council brought to the committee was an attempt to meet the supreme court wording and not go beyond it, I believe the council would endorse Senator Spellman's recommendation, being a lawyer and being very familiar with the actual process of filing law suits, that process be served. I don't think the council would object at all to that wording, if that could be worked into the bill.

I thank you very much, and if anyone has questions, I'll try to answer them.

REP. KINER: I have one question I'd like to ask you, and that is a very simple question. Do you concur with the statement made by FOIC, I'll just paraphrase it, that a public official has minimal or non-existent rights of privacy?

ROBERT BOONE: It depends on the public official. I think rights of privacy has come out here, if you define rights of privacy as these 23 categories that have been exempted, then the commission itself doesn't feel that way as a flat statement.

I don't think it does feel that way, whatever may have been said in a particular case, and I'm not sure where that comes from. Obviously the commissions position is that public officials have to be accountable and I think, from the standpoint of the media, I can tell you as a practical matter we feel that's true whether the official is, there has to be some level of accountability whether the official is a high ranking official or a low ranking official.

To give you a case in point, if let's say, this reflects a real situation, it demonstrated that a bunch of department of transportation officials were, or personnel were goofing off on the job, it might be desirable for a news medium to want to know what those people's work schedules were, when they were supposed to be at work. So it would be important to be able to get access to that kind of information at that level. Pay, what their pay level was, what their hours were. Conceivably there would be need for further accountability at higher levels, but the bottom line is that CCFOI representing the media, feel that there does need to be public accountability by public officials, and that court ruling really prevents that.

REP. KINER: Thanks Bob. Are there any other questions from committee members? Mary Anne Pressamarita.

HJ5 HJ6

MARY ANNE PRESSAMARITA: Mary Anne Pressamarita with Connecticut Citizens for Dedency. Mr. Chairman, and committee members, especially my own representative, Gary.