

Legislative History for Connecticut Act

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Sen: 3176, 3224-3226	(4)
House 5644-5656	(13)
GAE: 261-266, 285, 286-287, 350, 353, 357, 359-360, 362, 363	(16)
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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1993

VOL. 36
PART 9
2948-3332

003176

TUESDAY
June 1, 1993

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Temporarily. Calendar Item No. 496 is Pass Retained.
Calendar Item No. 498, Substitute for House Bill No.
6993, I would move this to the Consent Calendar.

THE CHAIR:

Is there any objection to placing Senate Calendar
498, Substitute for House Bill 6993, on the Consent
Calendar? Is there any objection? Hearing none, so
ordered.

SENATOR DIBELLA:

Calendar Item No. 500, Substitute for House Bill
No. 7231, I move to the Consent Calendar.

THE CHAIR:

Any objection to placing Senate Calendar 500,
Substitute for House Bill 7231, on the Consent
Calendar? Is there any objection? Hearing none, so
ordered.

SENATOR DIBELLA:

Calendar Item No. 503 is a Go.

On Page 14, Calendar Item No. 505 is a Go.

Calendar Item No. 506, House Bill No. 7120, I move to
the Consent Calendar.

THE CHAIR:

Is there any objection to placing Senate Calendar
506, House Bill 7120, on the Consent Calendar? Any
objection? Any objection? Hearing none, so ordered.

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Calendar Page 5, Calendar No. 392, Substitute for
House Bill 7031.

Calendar Page 6, Calendar No. 431, Substitute for
House Bill 5599. Calendar 432, Substitute for House
Bill 6888.

Calendar Page 7, Calendar No. 434, Substitute for
House Bill 6896. Calendar 436, Substitute for House
Bill 7244.

Calendar Page 8, Calendar No. 449, Substitute for
House Bill 6666. Calendar 452, Substitute for House
Bill 7321. Calendar 453, House Bill 6977.

Calendar Page 12, Calendar No. 490, Substitute for
House Bill 5579.

Calendar Page 13, Calendar No. 498, Substitute for
House Bill 6993. Calendar No. 500, Substitute for
House Bill 7231.

Calendar Page 14, Calendar No. 506, House Bill
7120. Calendar No. 509, Substitute for House Bill
7234.

Calendar Page 15, Calendar No. 511, Substitute for
House Bill 6800. Calendar 512, Substitute for House
Bill 7194.

Calendar Page 17, Calendar No. 531, Substitute for
House Bill 7201.

Calendar Page 18, Calendar No. 532, Substitute for

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House Bill 7108. Calendar No. 534, Substitute for
House Bill 6911.

Calendar Page 20, Calendar No. 548, Substitute for
House Bill 6652.

Calendar Page 21, Calendar 549, Substitute for
House Bill 7096.

Calendar Page 31, Calendar No. 387, Substitute for
House Bill 6873.

Calendar Page 32, Calendar 439, Substitute for
Senate Bill 838.

Madam President, that --. Correction. Calendar
Page 35, Calendar No. 324, Senate Bill No. 992.

Madam President, that completes the Consent
Calendar.

THE CHAIR:

Thank you very much, Mr. Clerk. You've heard the
items that have been placed on Consent Calendar No. 1
for today, June 1st, 1993. The machine is on. You may
record your vote.

Is Senator Jepsen here? Is Senator Jepsen here?

THE CHAIR:

Have all Senators voted and are your votes properly
recorded? Have all Senators voted and are your votes
properly recorded? The machine is closed.

The result of the vote:

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35 Yea
0 Nay
1 Absent

The Consent Calendar is adopted.

Mr. Clerk.

THE CLERK:

Calendar Page 16, Calendar No. 521, File 794 and
924, Substitute for House Bill 5972, AN ACT CONCERNING
STATE PERMITS TO CARRY PISTOLS AND REVOLVERS. (As
amended by House Amendment Schedule "A".

Favorable Report of the Committee on
Appropriations.

THE CHAIR:

Thank you very much. Is Senator Maloney right
here? Thank you.

SENATOR MALONEY:

Thank you, Madam President. I would move approval
of the Joint Committee's Favorable Report and passage
of the bill in accordance with the House.

THE CHAIR:

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

SENATOR MALONEY:

Madam President, all the bill does is provide a
modest increase in fees and then spends most of that

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GEN. ASSEMBLY
HOUSE

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House of Representatives

Tuesday, May 18, 1993

Clerk will take a tally. Would the Clerk please announce the tally.

CLERK:

Senate Bill 968 as amended by Senate "A" and House "A".

Total number voting	145
Necessary for passage	73
Those voting yea	132
Those voting nay	13
Those absent and not voting	6

DEPUTY SPEAKER COLEMAN:

The bill as amended is passed. Will the Clerk please continue with the Call of the Calendar.

CLERK:

Further down the page on Page 11, Calendar 533, Substitute for House Bill 6993, AN ACT CONCERNING APPEALS TO THE FREEDOM OF INFORMATION COMMISSION, CIVIL PENALTIES, FRIVOLOUS APPEALS AND THE ABUSE OF THE APPEAL PROCESS. Favorable Report of the Committee on Judiciary.

DEPUTY SPEAKER COLEMAN:

Representative Jarjura.

REP. JARJURA: (74th)

Yes, thank you, Mr. Speaker. Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report

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and adoption of the bill.

DEPUTY SPEAKER COLEMAN:

The question is acceptance and passage.

REP. JARJURA: (74th)

Mr. Speaker, the Clerk has in his possession, amendment, LCO Number 6527. I ask that he please call and read.

DEPUTY SPEAKER COLEMAN:

Would the Clerk please call LCO6527 designated House "A".

CLERK:

LCO6527, House "A" offered by Representative Lyons et al.

DEPUTY SPEAKER COLEMAN:

Representative Jarjura seeks permission to summarize the amendment. Is there objection? Is there objection? Seeing none, please proceed, Sir.

REP. JARJURA: (74th)

Yes, Mr. Speaker. What this amendment does, it's basically a screening amendment and changes the effective date from upon passage to July 1, 1993.

DEPUTY SPEAKER COLEMAN:

The Chair would entertain a motion for adoption.

REP. JARJURA: (74th)

I move adoption, Mr. Speaker.

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DEPUTY SPEAKER COLEMAN:

Thank you, Representative Jarjura. The question is adoption of House "A". Will you remark further? Will you remark further? Representative Bowden.

REP. BOWDEN: (31st)

Mr. Speaker, thank you. A question, through you to the proponent of the bill, please, or the amendment, rather.

DEPUTY SPEAKER COLEMAN:

Please frame your question.

REP. BOWDEN: (31st)

The bill itself, I think indicated an effective date of passage, and you're suggesting that it be July 1st. Could I ask the rationale behind that amendment, Representative, please.

DEPUTY SPEAKER COLEMAN:

Representative Jarjura.

REP. JARJURA: (74th)

Yes. Through you, Mr. Speaker. To handle situations in case there's appeals that are currently pending so that we don't change it in the middle of those and that we have a definitive date upon which the law will be changed.

DEPUTY SPEAKER COLEMAN:

Representative Bowden.

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REP. BOWDEN: (31st)

Mr. Speaker, thank you. And through you, Representative Jarjura, there will always be appeals pending, whether it's today or July 1st, wouldn't you guess? Why don't we get into it right now and deal with those that are pending, which are really aching for solution. Through you, Mr. Speaker.

DEPUTY SPEAKER COLEMAN:

Representative Jarjura.

REP. JARJURA: (74th)

Yes. Through you, Mr. Speaker, by changing it to July 1st, 1993, it will allow, give a chance for all parties to have notice of the change and give them a chance to become familiar with the changes, so it gives notice.

DEPUTY SPEAKER COLEMAN:

Representative Bowden.

REP. BOWDEN: (31st)

Mr. Speaker, thank you. In response to that, and through you, those appeals that go to the superior court simply will be placed on the docket. FOIC might have its particular agenda shortened if we were to pursue this at this moment.

No one needs any time, it seems to me to prepare any forms or personnel or procedures, and we can get

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into it right away. Through you, Mr. Speaker.

DEPUTY SPEAKER COLEMAN:

Representative Jarjura.

REP. JARJURA: (74th)

Well, through you, Mr. Speaker, I think it's a good idea to have a date certain, July 1st, 1993. It gives notice and allows, for matters currently on the docket to be either resolved. It's a screening amendment. I think it's technical. It doesn't really take away from the bill at all, and I would move its adoption.

DEPUTY SPEAKER COLEMAN:

Representative Bowden.

REP. BOWDEN: (31st)

And finally, Mr. Speaker, through you, it is intended then, that as of July 1st, whatever matters are pending will fall under the aegis of this particular bill, is that right? Through you, Mr. Speaker.

DEPUTY SPEAKER COLEMAN:

Representative Jarjura.

REP. JARJURA: (74th)

Through you, Mr. Speaker, that's correct.

REP. BOWDEN: (31st)

Thank you, Mr. Speaker. Thank you, Representative Jarjura.

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DEPUTY SPEAKER COLEMAN:

Thank you, Representative Bowden. Will you remark further? Will you remark further on House "A". If not, the Chair will try your minds. The item before the Chamber is House Amendment Schedule "A". All those in favor of House "A" please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER COLEMAN:

All those opposed say nay. The ayes have it.
House "A" is adopted and ruled technical.

Will you remark further on the bill as amended?

DEPUTY SPEAKER COLEMAN:

Yes, Representative Jarjura.

REP. JARJURA: (74th)

Yes, Mr. Speaker, what this bill does is set up a process for the Freedom of Information Commission to deal with abuses of the appeals process by individuals who may file frivolous or unreasonable or harrassing requests.

What it does is set up a series of first civil penalties and then failing that, it allows the Commission itself to direct the executive director not to hear an appeal.

As I understand the situation, the one that comes

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to mind is in Glastonbury in which there has been abuses of the appeals process under the Freedom of Information Act and this is designed to resolve those situations and I move adoption.

DEPUTY SPEAKER COLEMAN:

Will you remark further on the bill as amended?

REP. RADCLIFFE: (123rd)

Mr. Speaker.

DEPUTY SPEAKER COLEMAN:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Mr. Speaker, the Clerk has an amendment, LCO7367. May he please call and may I be given leave of the Chamber to summarize.

DEPUTY SPEAKER COLEMAN:

The Clerk has amendment, LCO7367 designated House "B". Would the Clerk please call.

CLERK:

LCO7367, House "B" offered by Representative Radcliffe.

DEPUTY SPEAKER COLEMAN:

Representative Radcliffe has requested permission to summarize the amendment. Is there objection? Is there objection? Seeing none, please proceed, Sir.

REP. RADCLIFFE: (123rd)

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Thank you, Mr. Speaker. This amendment would allow the Freedom of Information Commission to set up a process by which if a complaint were made, and assuming that all of the facts contained in that complaint were true, it's nevertheless did not state a violation of the Freedom of Information Act, it would allow the Commission to dismiss that complaint without a hearing.

I move adoption, Mr. Speaker.

DEPUTY SPEAKER COLEMAN:

The question is adoption of House "B". Will you remark further? Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Mr. Speaker, given the intent of this bill, as outlined by Representative Jarjura, I believe that this is certainly in keeping with the spirit of this particular act. What this provision would do is, it would model an administrative proceeding on the current procedure in court for determining what amounts to a motion to strike a complaint.

In this particular situation, if a complaint were filed, the Commission would have the option of looking at that complaint, looking at the four corners of the complaint and if it assumed that every fact in that complaint was true, everything that the complainant said was accurate, but nevertheless, even given all of

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those facts construed most favorably to the complainant, there was no violation of the Freedom of Information Act. It would allow the Commission to dismiss this particular claim.

Examples of this might be an individual who attended a meeting locally, and I had some familiar with one of these, who attended the meeting late, did not get an opportunity to hear one of the speakers and brought a complaint to the Freedom of Information Commission suggesting that he should have been given an opportunity to hear one of the other speakers who had spoken at the public hearing.

The individual was asked to come to the microphone, did in fact repeat what was said, a complaint was nevertheless filed. Under those circumstances, I think clearly the Freedom of Information Commission could look at the facts, could look at them most favorably to the complainant and say yes, it's very nice. And even assuming that everything you have to say is true, there's no violation of the law.

A similar situation would occur if an individual said, I was denied a right to speak at a meeting of the local board of finance. Well, there is no right to speak in the Freedom of Information Act. There is a right to attend. There is a right to take notes.

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There is a right to photograph under certain circumstances. There is no right to speak.

If that were alleged, it seems to me that in the interest of disposing of these types of appeals and allowing the Commission to hold hearings on the matters that are legitimately before it and do involve potential violations of the law, that this type of expedited procedure should be permitted.

It basically, as I indicated, tracks the motion to strike provisions of our practice book. It says that the Commission must construe everything that's said most favorably to the individual who's bringing the complaint, but does allow for elimination of the hearing procedure in situations where clearly, there's been no violation of the law. Thank you, Mr. Speaker.

DEPUTY SPEAKER COLEMAN:

Thank you, Representative Radcliffe. Will you remark further on House "B"? Will you remark further? Representative Jarjura.

REP. JARJURA: (74th)

Yes, Mr. Speaker. Representative Radcliffe presents a good and helpful amendment and I support its adoption. Thank you.

DEPUTY SPEAKER COLEMAN:

Thank you, Representative Jarjura. Any further

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remarks on House "B"? Will you remark further on House "B"? If not, the Chair will try your minds. The item before the Chamber is House Amendment Schedule "B". All those in favor of House "B" please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER COLEMAN:

All those opposed say nay. The ayes have it. House "B" is adopted and ruled technical. Will you remark further on the bill as amended? Will you remark further on the bill as amended? Representative Bowden.

REP. BOWDEN: (31st)

Mr. Speaker, thank you. Mr. Speaker, this bill levels the playing field for both persons who bring a case to the FOIC and also for municipalities and State agencies to respond.

If the person who brings the action is denied an appeal, he may refer this to superior court. If the agency wishes, it may take that same person to court if it's appeal has been denied by the FOIC and if the court orders an injunction and the individual violates that injunction, then the court may provide injunctive relief in the form of damages, attorneys' fees and court costs.

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And I think this is good for all our municipalities and agencies, Mr. Speaker, because we're all subject to occasional harrassment of a frivolous nature in our local municipalities and this provides precisely the sort of relief the towns and agencies need and Mr. Speaker, I urge passage.

DEPUTY SPEAKER COLEMAN:

Thank you, Representative Bowden. Any further remarks on the bill as amended? Will you remark further on the bill as amended? If not, will staff and guests please come to the well of the House. The members please be seated. The machine will be opened.

CLERK:

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

DEPUTY SPEAKER COLEMAN:

Have all members voted? Have all members voted and is your vote properly recorded? Please check the board to see that your vote is properly recorded. If all members have voted, the machine will be locked. I'd ask the Clerk to take a tally.

Will the Clerk please announce the tally.

CLERK:

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House Bill 6993 as amended by House "A" and
"B".

Total number voting	144
Necessary for passage	73
Those voting yea	142
Those voting nay	2
Those absent and not voting	7

DEPUTY SPEAKER COLEMAN:

The bill as amended is passed.

CLERK:

Please turn to Page 38, bottom of the page,
Calendar 473, Substitute for House Bill 7053, AN ACT
CONCERNING HOSPITALIZATION AND MEDICAL AND SURGICAL
PLANS FOR PROBATE JUDGES AND EMPLOYEES. Favorable
Report of the Committee on Appropriations.

REP. TULISANO: (29th)

Mr. Speaker.

DEPUTY SPEAKER COLEMAN:

Representative Tulisano.

REP. TULISANO: (29th)

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

DEPUTY SPEAKER COLEMAN:

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

JOINT
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More important, it provides for a direct access on a rationale basis to relief to towns and agencies in this situation.

Now, we have requests, just to give you an example, that this is not --

REP. RAPOPORT: I'm going to have to ask you to wrap up.

ATTY. BILL ROGERS: I will, I'm sorry. We have been promised by this individual that in the next 25 years he will be making 100s, perhaps 1000s of requests. And these are accompanied by this kind of, and this is a copy, this kind of full color, and I will not cloud up your record with the obscenities and profanities that accompany this. But all I can say is that I would ask you take this bill, amendment seriously. We will be sending exhibits to put this in perspective and I thank you for your patience.

REP. RAPOPORT: Senator Lovegrove.

SEN. LOVEGROVE: Ten years ago when I first got elected to the State Senate, I served on this Committee with Tony Parker, State Representative.

ATTY. BILL ROGERS: Yes.

SEN. LOVEGROVE: She was introducing legislation involving a problem that sounds identical to this. Is this the same person now who was doing it ten years ago?

ATTY. BILL ROGERS: The same, yes it is. It is now 15 years. We need a remedy. We need help.

REP. RAPOPORT: Representative Mazzocchi.

REP. MAZZOCOLI: Thank you Mr. Chairman. I come from Newington and Newington has had similar problems in the past. I didn't have a chance to really look closely at HB6993. But on yours, I guess my concern is that I have seen instances where a town has responded to numerous requests with less than forth coming results. And have again, ultimately made people take or do things that may be we don't appreciate.

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I guess my concern is that, how do you handle a balance here, in the specifics of the legislation, you talk about the appeal, appeal to the Freedom of Information frivolously on line 22. I have had many instances where a town official says, that is a frivolous request, when a person is trying to seek information, important information.

ATTY. BILL ROGERS: Let me give you an example. We have requests, we have 100s of requests, 1000s of papers. 100s of hours of work that we have complied with requests from this individual and others. We get requests like copies of all the personnel records for all the employees in the school system. 1100 people. Now you know to produce those records, some of which are confidential information, you have to extract certain exempted information.

You are talking thousands of hours to do that. We get another request, all of the job applications for all teachers, there is over 400. These applications can be 100, 200 pages thick, depending on how long the teacher has been around. All of the applications, personal records of the town police department. To produce 200 town attorneys files. All of which that has to be reviewed.

I mean, that is the kind of requests that you would see that is harrassing and frivolous and unreasonable on its face. It is not a request for specific information. We will get requests for like a copy of the first page only of a town council minutes for a ten year period. Now that is not for information. And then there will be alternated by year and month, so that you cannot make a run of copies. You must keep going back and forth and back and forth. That is the kind of things.

REP. MAZZOCOLI: Okay, I know, specific instances, our library maintains copies of minutes and that sort of thing, and the public can be referred in those kinds of cases, to make their own copies and other kinds. We have allowed people to come in and actually view the copies in the office and make their own copies at their own expense. Have you implemented any of those sorts of things?

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ATTY. BILL ROGERS: I can only say, that will not satisfy. We have copies, we have requests for copies of the first paychecks of the first week of each teacher in the first grade. Next week it is the second grade.

REP. MAZZOCOLI: I guess what I am trying to get from your piece of legislation, who determines a frivolous nature?

ATTY. BILL ROGERS: The court would. In other words, we are not asking, all we are asking is for access to the court, to present evidence. And the legislation that has been proposed has been very detailed, specific requirements of what must be shown, what the standard is, to apply. So it is not like we unilaterally decide we are going to do this. The town in this situation that we have been confronted with, would only have the right to seek a hearing, an injunctive relief. That's all. so So there are safeguards. There are protections.

REP. MAZZOCOLI: Thank you.

REP. RAPOPORT: Senator San Angelo.

SEN. SAN ANGELO: Just on the copying part of it, I know our town charges the people for copies of anything. You can charge these people. I don't know understand why you are not charging them for the cost of doing this.

ATTY. BILL ROGERS: The cost of the copies, 50 cents a page, is nothing compared to the work involved in say copying the personnel records of 1100 people. Because you not have, you can't just copy the records. You must go through and take out on threat of teachers federation and unions, take out the personal information. So you have to run the copy, then you readapt it. Then you have to copy the redapted. Someone has to go through and decide what is exempt and what is not exempt.

The cost of the copy is nothing compared to the hundreds of hours of labor that are involved in preparing it. That is the problem we have. We don't do this lightly.

REP. RAPOPORT: Okay, thank you. He did charge.

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ATTY. BILL ROGERS: Oh yes.

SEN. DIBELLA: Not for the total cost.

ATTY. BILL ROGERS: Well you can't. You can only recover, for instance, for example, asked for production of 200 town attorneys files, as has been done. Now those files have to be retrieved from dead storage, there is a flat 25 dollar fee per file. Bigger if it is a bigger file. Someone has to go through that knows what is exempt and pick out the items of memos, correspondence that are exempt under the Act. And then copy that and then produce that file.

If it is just for inspection of the file, 280 files with the amount of time, the cost could be and we have estimated the cost by other counsel, to be 20,000 dollars to produce that. We can't charge anything for that. Because you are not making a copy.

REP. RAPOPORT: Thank you. Okay. Alright, our next speaker is Mitch Pearlman from the Freedom of Information Commission, followed by Catherine Blinder.

MITCH PEARLMAN: Good afternoon, my name is Mitchel Pearlman and I am the Executive Director of the Connecticut Freedom of Information Commission. And I am here to speak on I think a half a dozen Freedom of Information bills. Before I get started and I will go as fast as I can. I would, however, like to introduce to the Committee three members of our Commission, who have taken their time to come here and make their presence known to the Committee.

HB 5266
HB 6993
HB 5360
HB 6998
HB 6996
HB 5997

Over here is Ken Groupee who is the Chairman. To his left which is hard to see, is our oldest, senior commissioner, Dean Avery and to Dean's left Joan Fitch. There are five members of the Commission, three of whom are here today.

I would like to try to group, there are several bills in several groupings that are related to each other. I would like to address those together if I may, so they will be out of sequence.

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First of all, there are two bills, HB6993 and HB5266 which was the subject of Mr. Rogers and Representative Bowden's comments, dealing with the same purpose. The, HB5266, as has been pointed out, would allow a municipality where it feels, or perhaps where it doesn't feel that somebody is seeking access to public records for harrasing purposes, to go directly to court.

We think that that will have a chilling affect on citizens who want to exercise their right, because right off the top, they would no longer have the opportunity to go before the Freedom of Information Commission, which is set up as a relatively quick, relatively inexpensive administrative proceeding that people could just take a half a day off and resolve their conflict, as opposed to hiring a lawyer and going to court.

But we do recognize the problem that the Glastonbury contingent was here to talk about. There has been a problem. Glastonbury probably foremost. But there have been one or two other instances across the state where our Commission, quite honestly, has been hamstrung for dealing with the problem by virtue of the way the law is.

Right now the law is written in such a way that the Commission has to hear every case, whether it has merit, whether it has jurisdiction, on the Freedom of Information or not. So what HB6993 does is propose a summary procedure which will permit the Freedom of Information Commission not to hear a case where it determines after hearing the parties in all argument, having received written argument from them, if the Commission decides that the claim does not present.

I'm sorry, that the appeal does not present the claim within the commissions jurisdiction, that has to do with ethics and not Freedom of Information. That invokes the Commission's jurisdiction in order to perpetrate an injustice, which might be the kind of situation that was described to you by the prior speakers.

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Or third, constitutes abuse of the Commission's administrative process. We have a case for example, in which somebody keeps bringing a complaint against the University of Connecticut, saying I would like to have all records about me. They have given him all the records about him, and he just wants to keep bringing these officials down there having affidavits and so on and so forth.

It becomes a problem. Our mechanism for handling the problem would basically, if we find any one of these three standards to have been met, it will be deemed that the Commission's administrative processes will be exhausted and the parties will go directly to court. Where the courts have greater powers, powers that the administrative agencies don't have to deal with the underlying issues.

We recognize the problem that HB5266 has. We think our method of dealing with it is less intrusive on the citizens of Connecticut.

The other two bills that I would like to deal with, because they address the same issues, is HB5360 which was introduced by Representative Fährbach. And HB6998 which is introduced at the request of the Freedom of Information Commission.

Both of these bills have as their motivation to undo a terrible, one of the top ten worst decisions of the Connecticut Supreme Court. In this case, the Elections Review Committee of the Utilities District, versus the Freedom of Information Commission, which is found at 219 Connecticut reports, page 685.

Basically what the supreme court did in that case is, notwithstanding the fact that the Freedom of Information Act applies to all public agencies, and quote, "any committee thereof". The supreme court said that it doesn't apply to every committee thereof. The thing goes on to say that there are two kinds of committees.

One kind of committee composed entirely, majority whose members are appointed by the appointing authority. For example, legislative committee such as this. Every member of the committee is a member of the legislature.

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BOB BROWN: Thank you Representative Rapoport. Thank you also for going back and forth here. It makes it possible for me to stick around long enough to testify. I do appreciate that.

I am Bob Brown. I am editorial page editor for the Bristol Press. I am Vice President of the Connecticut Council and Freedom of Information, which is distinct from the Freedom of Information Commission. WE are purely an advisory organization.

HB 5266
HB 6993

But I come to speak about all the bills that Mitch Pearlman did and I will try to be brief.

Lumping them together as, well going with the bill that has been discussed by the two previous speakers, I don't need to spend much time on it. Two previous public speakers. HB6996, AN ACT CONCERNING PUBLIC RECORD FEE DISPUTE JURISDICTION.

I would simply highlight one point. That the Freedom of Information Commission is an agency that was established through well received questions of access. The Office of Policy and Management has many functions. Access is not primary among them. I simply wonder why, I suspect that the reason that on some level we felt as if we had to at one point it was necessary to have OPM get involved in computer records, is because we are all afraid of computers, except for those of us who know how to use them.

The principal of access is the principal of access and we have a commission in place to deal with such things. I think that the change proposed would put things right there.

Dealing with HB6998 and HB53690, the ones that are essentially are attempting to correct what I like Mitch Pearlman, the abomination of A Utilities district decision. The purpose of the Freedom of Information Law is to open up the process of government, not just the results of government to the people. Let people see how decisions are arrived at as well as what the decisions finally are.

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Anything, I would argue, that arbitrarily and needlessly imposes a barrier, and I would point out that the law does permit certain exceptions. It doesn't mandate exceptions, it permits them because it assumes that in certain instances the people's interest is best served if they don't know right away what their government is doing. There is certain very limited cases where public agencies can invoke secrecy to do their business.

I don't see where establishing a committee to deal with an issue necessarily falls into that category. I don't think it does fall into that category. I think what happened here is we came up with a decision that basically makes it possible for government to exempt things that, indeed, it isn't in the public interest for the people to see. And I would encourage you to look favorably on HB6998, which is the commission bill and I think deals most creatively with that problem.

AN ACT CONCERNING FRIVOLOUS OR UNREASONABLE HARRASSABLE REQUESTS OR APPEALS UNDER THE FREEDOM OF INFORMATION ACT. HB5266 and HB6993 which has virtually an identical title. I would simply encourage the committee to be very careful. I mean it really, some rigor is needed in defining what is frivolous. It is sort of like art. I don't know what it is but I know when I see it.

One person's frivolous request for information is another person's absolutely vital need to know. The people in Glastonbury have a nightmare situation. In Bristol there was a somewhat similar situation regarding someone who basically attempted to harrass the police department. He is in jail now for reasons that had absolutely nothing to do with his attempt to harrass the police department.

In any event, yes, that is a problem. Glastonbury has a serious problem and I think that perhaps it does need to be addressed. I would suggest though, as one guiding principal, that again, we have in place an agency to permit, to govern questions of access. We also have a procedure. If you have a request for information you go to the commission, then you can appeal if you feel it necessary, a commission decision to the court.

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It is a procedure that has to the extent that it has been, that people have gone to court, it has worked. Now, in essence, what the proposal of Representative Bowden and Mr. Rogers when they spoke. What would essentially happen is the Commission would have no place in there. I would submit that that is a change in what has been the way we do things. And I am not sure we need to take that step. The legislature should take that step lightly.

Finally and absolutely gratuitously, since I got the mic, SB638, AN ACT CONCERNING GENDER AND RACIAL BALANCE ON BOARDS AND COMMISSIONS. I am speaking as a citizen now not in any context of Freedom of Information.

I would simply point out in response to Senator Lovegrove's question. If we had, we assume that all citizens are capable of participating equally, we assume that all categories of people are roughly equal, racial and sexually, in all different ways. Then we have to look at what is clearly a problem. We have a disproportion. We have more white males than anyone else serving. And I would suggest that SB638, Catherine Blinder is absolutely right, it is an affirmative action bill and simply its crude social engineering to avoid a problem created by a long informal history
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(cass 2) (cassettes 1 and 2 don't connect, small gap)

REP. RAPOPORT: Any questions from members of the committee? Thank you. Jeff Davis.

REP. JEFF DAVIS: Chairman Rapoport. Thank you. My name is Jefferson Davis from the 50th House District which covers all or part of six town in North Eastern Connecticut. I'm here today to testify in favor of proposed HB6273, AN ACT CONCERNING LOBBYING BY MEMBERS OF THE GENERAL ASSEMBLY.

I think that an elected officials, it's our obligation to do as much as we can to create an atmosphere in the General Assembly that allows for the most honest discussion possible of the issues that come before us, both in reality and in

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The measure that we view as the most realistic and practical is HB6778 introduced by Representative Ford calling for a one year ban. However, we would also support a two year waiting period as addressed in other bills considered today.

Incidentally, on the national scene, Senator Borin has initiated a revolving door bill applying to senior congressional staff members. His bill contains a 5 year waiting period which is considered too long by numbers of people who have reviewed it. You will probably have to compromise and come down to a lesser period.

We would feel a sense of fulfillment if, in this session, the General Assembly would vote favorably to an enact a law (inaudible) its former members from returning to lobby the legislative branch for at least one year after they had departed from the legislature.

Thank you for your time and attention.

REP. RAPOPORT: Thank you Sid, very much and I'm sure we'll see you on other bills as we go along.

SID GARVAIS: You will.

REP. RAPOPORT: Eric Lorenzino.

ERIC LORENZINO: Thank you members of the commission for staying so late today.

I've submitted written testimony in support ...

REP. RAPOPORT: Eric, we're a committee. If we were a commission we would

ERIC LORENZINO: Good point.

I've submitted written testimony in support of the revolving door ban but I am not going to read that.

I just want to speak very briefly on a few of the other bills.

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And, finally on HB6993, 6996 and 6998, I think the Freedom of Information Commission has taken a good approach to these issues. These bills seem to address some of the problems that exist without infringing on the public right to access public records.

I'll take any questions.

REP. RAPOPORT: Any questions. Thank you Eric.

ERIC LORENZINO: Thank you.

REP. RAPOPORT: Okay. Cynthia Sniezak to be followed by Dean Avery from FOIC.

CYNTHIA SNIEZAK: Hello. My name is Cindy Sniezak and I am from Windsor, Connecticut and I'd like to address two bills that are on your agenda today.

Basically I came here today because I think the situation that I went through with Freedom of Information in 1992 is a good illustration of why the bill that they raised, HB6998, is very necessary.

My complains, which was FOIC Docket 92-67 was dismissed because the Freedom of Information concluded that they lacked the jurisdiction to hear my complaint and it specifically goes back to the citation that they used in their bill - the 8th Utilities District case in Manchester.

Whatever the merits of my complaint were, they were never really able to be taken into account and to consider whether or not the information I sought should be open to the public.

In a nutshell, I wanted to attend meetings and read material being produced by an insurance study commission created by joint action of the Windsor Board of Education and the Windsor Education Association which was the teacher union in our community. That was a body - when it was created to have 5 members on it, 2 members were solely appointed by the board of education, 2 members were solely appointed to the teacher union and the 5th, never named members, was to have been set by joint action of the 2 committees.

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REP. RAPOPORT: That's appreciated.

DEAN AVERY: I comment you on yours as well.

I'm a member of the State Freedom of Information Commission and have been for 8 years.

I consider myself far more articulate than Mitchell Foreman but in the interest of time, I want to say that I subscribe to the position he has expressed earlier on the six bills of interest to the Freedom of Information Commission.

HB 5266

HB 6993

HB 5360

HB 6998

HB 6996

HB 5997

I'd like to take just half a second to say that I hope this Committee will look favorably on a bill that would pertain to frivolous and harassing complaints.

I think it's imperative that some actions be taken along those lines and I think the Committee raised bill is the way to go rather than the bill proposed by the officials from Glastonbury.

(HB 5266)

I thank you very much.

REP. RAPOPORT: Dean. May I ask you a quick question.

Mr. Avery?

DEAN AVERY: I beg your pardon.

REP. RAPOPORT: May I ask you a very fast question?

DEAN AVERY: Sure.

REP. RAPOPORT: I also, obviously, would agree with you that we don't want to put a chilling effect into people; into potentially legitimate efforts here but I am a little bit concerned with the ... after so many years of trying to deal with this Glastonbury situation - it's still before us. I mean, I first came on this Committee in 1985 and we had a bill to protect the town of Glastonbury from this same person so obviously we haven't been so successful so far so I want to make sure that if we are going to do this this year that we finally do it and protect the town.

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KENNETH GRUBE: I am Kenneth Grube. I am from Groton, Connecticut. I am Chairman of the Freedom of Information Commission. You've heard a great deal about the bills which have been offered.

The thing that I want to emphasize that it will improve an already effective Commission.

Our function, as you know, is to deal with frankly angry people; angry citizens and citizens who have been put off and to do the best we can with it.

With these improvements, we can do an even better job.

I'd like to point out that over the past year, we've improved our own performance despite the fact of having been short staffed to the point where we are now receiving cases and hearing them and issuing decisions in two months to 10 weeks. That's down from a year.

We're trying our hardest and if the legislature will give us these improvements, I think we'll be an even more effective agency recognized even more readily throughout the country as we are now but even we will be recognized even more so.

Thank you very much ladies and gentleman and I marvel at your patience.

Thank you very much.

REP. RAPOPORT: Any questions from the Committee?

Alright. Let's see ... the last written speaker was Dr. Rich Goldman. Is he still here?

In that case, there are two people, who have indicated that in testifying; first was Bob Boone - is Bob Boone here? To be followed by Joyce (inaudible).

BOB BOONE: Chairman Rapoport, members of the Committee. I too appreciate your endurance. I shouldn't say a great deal because I think the members of the Commission have already said it.

HB 6998

HB 6996

HB 5360

HB 5997

HB 6993

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I am here representing the Connecticut Council on Freedom of Information which is basically a media group supportive of freedom of information and I am news editor of the Journal Inquirer, a newspaper in Manchester.

We too support the committee raised FOI bills and I'll try briefly to say why.

We think there are simple straightforward ways to deal with the basic public access purpose of the law and to make clear certain things .. two court decision have rendered unclear and here I am talking about HB6998 the committee bill, HB6996 the computer record fees bill.

The committee bill has three simple words "or created by" to the law to rectify a decision of the supreme court in what is called the 8th Utilities Case but is really the elections review committee of the Utilities District Case. What the committee was formed to do was review the election rules of the 8th Utilities District and if that isn't a public policy issue, I don't know what is.

The court's ruling ... there was one member of the public agency on that committee and for that reason, I just ... I know that HB5360 relating to committees is well intentioned. It was a bill that came out of the committee last year but I don't believe as it's written that that bill would address the problem that the 8th Utilities District dealt with because it talks about committees composed entirely of people who are not members of the public agency whereas, the Elections Review Committee's case had a public agency member on it.

So I think in that sense, HB6998 is a far superior bill; it's simple, it's direct and it does the job.

The computer records case for the benefit of the new members of the committee; you should know that the computer records bill that emerged two years ago and took effect in July was a collaborative effort you could say of the Commission on Freedom of Information, CCFOI and this committee.

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On the matter of frivolous appeals, I think other speakers have really said enough but we do favor HB6993 over the Glastonbury bill and we do hope that a meeting of minds can be achieved here. We will certainly cut CCOFI's weight to the extent it exists, behind that.

I would point just one thing out that the Commission; Freedom of Information Commission, made a good faith effort to deal with Glastonbury's problem. If got shut down by the courts. There is really now assurance whatsoever that giving a municipality the power to go directly to court will fare any better. The same due process concerns that the court expressed before might be expressed again.

So, what the commission has done is drafted the bill that tries to address the due process concerns and the need to have some discretion in hearing cases and we believe that HB6993 does that. We frankly, don't have the same confidence that municipalities will always use the question of frivolity as dispassionately as might an independent antimonious council.

Finally, I just want to say a word on HB5997 AN ACT CONCERNING THE APPLICATION OF THE FREEDOM INFORMATION ACT TO CERTAIN MUNICIPAL AUDIT REPORTS. Maybe there is something I missed in what Councilman Chodo said but it seems to me that the principal in Freedom of Information Act, particularly in 1-119C which he referred to, mandates disclosure of or preserves the confidentiality, should I say of reports prior to their discussion by a public agency but the whole point of 1-119C is to preserve the decision making process of government as a public act and frankly, I just don't understand why if there was a problem between the .. discovered with the Board of Education in its audit process, why anyone would want to keep it a secret, let alone, for 9 months.

Thank you very much and I'll be happy to answer any questions.

REP. RAPOPORT: Representative Jarjura.

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REP. JARJURA: I know it's late and I'll try to keep it brief.

I happen to share Chairman Rapoport's concern with the Glastonbury situation. I'm not familiar with it, I've never served - this is the first time I'm up here but my concern goes beyond that, you know, are we reacting to one person who may be, for reasons undenounced to me, you know, unstable or something. My concern goes to not only the bill put forward by Glastonbury but the bill put forward by the Freedom of Information Committee in terms of defining frivolous and unreasonable, harassing requests. Going back to, besides what was said by the Director, the chilling effect - I have a concern, going back to my law school days of problems of over broadness and void for vagueness in the law and whether or not we are subjecting the opening up the challenges of that types of concerns.

HB 6993

At the same token, I guess we do have to deal with this Glastonbury situation.

BOB BOONE: I think the difference between the bills, as I understand it, the FOI bill involves a fact finding process before the clamps are put on and my understanding of the Glastonbury bill as it's now framed is that the town could simply decide that somebody was acting frivolous and could go in and seek an injunction without any third party or administrative law oversight and I think that's the difference between the bills as they are framed.

I don't think any situation is perfect. I happen to be peripherally familiar with the Glastonbury situation since our newspaper too has received these mailings; some of them - we haven't received any recently. I can they may have learned we don't circulate in Glastonbury but it is a difficult situation. It is not a unique situation and I think the media our concerned about the due process argument too and maybe some fine tuning (inaudible) goes forward. I am not a lawyer but I am sure that people could put their minds to it and fine tune it.

REP. JARJURA: Thank you very much.