



# House of Representatives

General Assembly

**File No. 438**

*January Session, 2001*

Substitute House Bill No. 6636

*House of Representatives, April 24, 2001*

The Committee on Government Administration and Elections reported through REP. KNOPP of the 137th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING PRIVATIZED PUBLIC RECORDS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 1-200 of the general statutes is repealed and the  
2 following is substituted in lieu thereof:

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

6 (1) "Public agency" or "agency" means: [any]

7 (A) Any executive, administrative or legislative office of the state or  
8 any political subdivision of the state and any state or town agency, any  
9 department, institution, bureau, board, commission, authority or  
10 official of the state or of any city, town, borough, municipal  
11 corporation, school district, regional district or other district or other  
12 political subdivision of the state, including any committee of, or

13 created by, any such office, subdivision, agency, department,  
14 institution, bureau, board, commission, authority or official, and also  
15 includes any judicial office, official, or body or committee thereof but  
16 only [in] with respect to its or their administrative functions; [. "Public  
17 agency" includes an]

18 (B) Any person that performs a governmental function, as defined  
19 in subdivision (11) of this section, but only with respect to the  
20 performance, administration or management of that governmental  
21 function; or

22 (C) An "implementing agency", as defined in section 32-222.

23 (2) "Meeting" means any hearing or other proceeding of a public  
24 agency, any convening or assembly of a quorum of a multimember  
25 public agency, and any communication by or to a quorum of a  
26 multimember public agency, whether in person or by means of  
27 electronic equipment, to discuss or act upon a matter over which the  
28 public agency has supervision, control, jurisdiction or advisory power.  
29 "Meeting" shall not include: Any meeting of a personnel search  
30 committee for executive level employment candidates; any chance  
31 meeting, or a social meeting neither planned nor intended for the  
32 purpose of discussing matters relating to official business; strategy or  
33 negotiations with respect to collective bargaining; a caucus of members  
34 of a single political party notwithstanding that such members also  
35 constitute a quorum of a public agency; an administrative or staff  
36 meeting of a single-member public agency; and communication  
37 limited to notice of meetings of any public agency or the agendas  
38 thereof. A quorum of the members of a public agency who are present  
39 at any event which has been noticed and conducted as a meeting of  
40 another public agency under the provisions of the Freedom of  
41 Information Act shall not be deemed to be holding a meeting of the  
42 public agency of which they are members as a result of their presence  
43 at such event.

44 (3) "Caucus" means a convening or assembly of the enrolled  
45 members of a single political party who are members of a public  
46 agency within the state or a political subdivision.

47 (4) "Person" means natural person, partnership, corporation, limited  
48 liability company, association or society.

49 (5) "Public records or files" means any recorded data or information  
50 relating to the conduct of the public's business prepared, owned, used,  
51 received or retained by a public agency, or to which a public agency is  
52 entitled to receive a copy by law or contract, whether such data or  
53 information be handwritten, typed, tape-recorded, printed,  
54 photostated, photographed or recorded by any other method.

55 (6) "Executive sessions" means a meeting of a public agency at  
56 which the public is excluded for one or more of the following  
57 purposes: (A) Discussion concerning the appointment, employment,  
58 performance, evaluation, health or dismissal of a public officer or  
59 employee, provided that such individual may require that discussion  
60 be held at an open meeting; (B) strategy and negotiations with respect  
61 to pending claims or pending litigation to which the public agency or a  
62 member thereof, because of [his] the member's conduct as a member of  
63 such agency, is a party until such litigation or claim has been finally  
64 adjudicated or otherwise settled; (C) matters concerning security  
65 strategy or the deployment of security personnel, or devices affecting  
66 public security; (D) discussion of the selection of a site or the lease, sale  
67 or purchase of real estate by a political subdivision of the state when  
68 publicity regarding such site, lease, sale, purchase or construction  
69 would cause a likelihood of increased price until such time as all of the  
70 property has been acquired or all proceedings or transactions  
71 concerning same have been terminated or abandoned; and (E)  
72 discussion of any matter which would result in the disclosure of public  
73 records or the information contained therein described in subsection  
74 (b) of section 1-210.

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

81 (8) "Pending claim" means a written notice to an agency which sets  
82 forth a demand for legal relief or which asserts a legal right stating the  
83 intention to institute an action in an appropriate forum if such relief or  
84 right is not granted.

85 (9) "Pending litigation" means (A) a written notice to an agency  
86 which sets forth a demand for legal relief or which asserts a legal right  
87 stating the intention to institute an action before a court if such relief or  
88 right is not granted by the agency; (B) the service of a complaint  
89 against an agency returnable to a court which seeks to enforce or  
90 implement legal relief or a legal right; or (C) the agency's consideration  
91 of action to enforce or implement legal relief or a legal right.

92 (10) "Freedom of Information Act" means this chapter.

93 (11) "Governmental function" means the administration or  
94 management of a program of a public agency, which program has  
95 been authorized by law or by contract to be performed, administered  
96 or managed by a person other than a public agency. "Governmental  
97 function" includes, but is not limited to, a program involving the  
98 administration or management of public education, public safety,  
99 corrections, emergency medical services, automotive emissions testing,  
100 state and local government facilities or institutions, tax collection and  
101 assessment, and information technology services for public agencies.  
102 "Governmental function" does not include (A) the mere provision of  
103 products, commodities or services to a public agency, whether or not  
104 by contract, without the delegated responsibility to administer or  
105 manage a program of a public agency, or (B) a building or highway

106 construction project performed by a contractor for a public agency or  
107 the provision of services to individuals at privately owned facilities,  
108 including, but not limited to, nursing homes, medical clinics, domestic  
109 violence shelters or shelters for the homeless, which services are paid  
110 in whole or in part by government funds.

111 (12) "Program of a public agency" means any activity of a public  
112 agency that is authorized or permitted by law.

113 Sec. 2. Subsection (a) of section 1-210 of the general statutes is  
114 repealed and the following is substituted in lieu thereof:

115 (a) Except as otherwise provided by any federal law or state statute,  
116 all records maintained or kept on file by any public agency, or all  
117 records to which a public agency is entitled to receive a copy by law or  
118 contract, whether or not such records are required by any law or by  
119 any rule or regulation, shall be public records and every person shall  
120 have the right to inspect such records promptly during regular office  
121 or business hours or to receive a copy of such records in accordance  
122 with the provisions of section 1-212. Any agency rule or regulation, or  
123 part thereof, that conflicts with the provisions of this subsection or  
124 diminishes or curtails in any way the rights granted by this subsection  
125 shall be void. Each such agency shall keep and maintain all public  
126 records in its custody at its regular office or place of business in an  
127 accessible place and, if there is no such office or place of business, the  
128 public records pertaining to such agency shall be kept in the office of  
129 the clerk of the political subdivision in which such public agency is  
130 located or of the Secretary of the State, as the case may be. Any  
131 certified record hereunder attested as a true copy by the clerk, chief or  
132 deputy of such agency or by such other person designated or  
133 empowered by law to so act, shall be competent evidence in any court  
134 of this state of the facts contained therein. Each such agency shall  
135 make, keep and maintain a record of the proceedings of its meetings.

**GAE**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:** None

**Affected Agencies:** Freedom of Information Commission

**Municipal Impact:** None

**Explanation**

**State Impact:**

The bill applies the requirements of the state's Freedom of Information Act to people, businesses and organizations that perform a governmental function for purposes of that function alone. There is no fiscal impact to the Freedom of Information Commission as the commission has been receiving complaints and hearing cases from similar entities prior to the *Envirotest Systems Corporation v. Freedom of Information Commission* decision.

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**OLR BILL ANALYSIS**

sHB 6636

***AN ACT CONCERNING PRIVATIZED PUBLIC RECORDS.***

**SUMMARY:**

This bill applies the requirements of the state's Freedom of Information Act (FOIA) to people, businesses, and organizations that perform a governmental function for purposes of that function alone. It defines "governmental function" to mean the administration or management of a public agency's program that has been authorized by law or by contract to be performed by an entity other than a public agency (though the bill adds to the definition of "public agency" any entity that performs a governmental function). Under the bill, a public agency's program is any activity authorized or permitted by law.

The bill expands the definition of a public record to include all records to which a public agency is entitled by law or contract.

The FOIA makes public records available for inspection or copying and exempts records that an agency can keep confidential for a variety of specified reasons. Public agencies must also comply with open meeting requirements.

EFFECTIVE DATE: October 1, 2001

**GOVERNMENT FUNCTIONS**

Under the bill, a government function includes a program involving public education, public safety, corrections, emergency medical services, automotive emissions testing, government facilities or institutions, tax collection and assessment, and information technology services for public agencies. It does not include (1) provision of products, commodities, or services to a public agency without the delegated responsibility for program administration or management; (2) a building or highway construction project; or (3) services provided

at privately owned facilities like nursing homes, medical clinics, or shelters for the homeless or victims of domestic violence.

## **BACKGROUND**

### ***Court Decision***

In *Envirotest Systems Corporation v. Freedom of Information Commission*, 59 Conn. App. 753 (2000), the Appellate Court held that the plaintiff, Envirotest, is not the functional equivalent of a public agency even though it performs a governmental function (i.e., provides emissions inspections for the public). It found Envirotest operates under a contract with the state, not because it is required to do so by law, and the Department of Motor Vehicles does not exert direct or continuous regulatory control over its business. The Court concluded, therefore, that the company was not subject to the disclosure requirements of the FOIA when asked for certain materials related to state vehicle inspection report forms.

## **COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 20      Nay 0