



House of Representatives

File No. 820

General Assembly

January Session, 2001

(Reprint of File No. 438)

Substitute House Bill No. 6636
As Amended by House Amendment
Schedule "C"

Approved by the Legislative Commissioner
May 25, 2001

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 Section 1-200 of the general statutes is repealed and the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, and in section 2 of this act, the following
4 words and phrases shall have the following meanings, except where
5 such terms are used in a context which clearly indicates the contrary:

6 (1) "Public agency" or "agency" means any executive, administrative
7 or legislative office of the state or any political subdivision of the state
8 and any state or town agency, any department, institution, bureau,
9 board, commission, authority or official of the state or of any city,
10 town, borough, municipal corporation, school district, regional district
11 or other district or other political subdivision of the state, including
12 any committee of, or created by, any such office, subdivision, agency,
13 department, institution, bureau, board, commission, authority or
14 official, and also includes any judicial office, official, or body or
15 committee thereof but only in respect to its or their administrative

16 functions. "Public agency" includes an "implementing agency" as
17 defined in section 32-222.

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

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

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

44 (5) "Public records or files" means any recorded data or information
45 relating to the conduct of the public's business prepared, owned, used,
46 received or retained by a public agency, or to which a public agency is
47 entitled to receive a copy by law or contract, whether such data or

48 information be handwritten, typed, tape-recorded, printed,
49 photostated, photographed or recorded by any other method.

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

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

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

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

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

88 (11) "Governmental function" means the administration or
89 management of a program of a public agency, which program has
90 been authorized by law to be administered or managed by a person.
91 "Governmental function" shall not include the mere provision of goods
92 or services to a public agency without the delegated responsibility to
93 administer or manage a program of a public agency.

94 Sec. 2. (NEW) Each contract in excess of two million five hundred
95 thousand dollars between a public agency and a person for the
96 performance of a governmental function shall (1) provide that the
97 public agency is entitled to receive a copy of records and files related
98 to the performance of the governmental function, and (2) indicate that
99 such records and files are subject to the Freedom of Information Act
100 and may be disclosed by the public agency pursuant to the Freedom of
101 Information Act. No request to inspect or copy such records or files
102 shall be valid unless the request is made to the public agency in
103 accordance with the Freedom of Information Act. Any complaint by a
104 person who is denied the right to inspect or copy such records or files
105 shall be brought to the Freedom of Information Commission in
106 accordance with the provisions of sections 1-205 and 1-206 of the
107 general statutes.

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:

OFA Fiscal Note

State Impact: None

Affected Agencies: Freedom of Information Commission

Municipal Impact: None

Explanation

State Impact:

The bill as amended subjects entities that have a contract in excess of \$2.5 million with a public agency to perform a governmental function, to the Freedom of Information Act. 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.

House "C" strikes the original bill and its associated fiscal impact, the amendment becomes the bill and its fiscal impact is described above.

OLR Amended Bill Analysis

sHB 6636 (as amended by House "C")*

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

The bill extends the Freedom of Information Act's (FOIA) provisions to an individual, business, or organization's records and files that relate to the entity's duty to administer or manage a public agency's program.

The entity's duty must derive from a legally authorized contract of more than \$2.5 million and require more than the mere provision of goods and services to an agency.

The contract must provide that the (1) agency is entitled to copies of the entity's covered records and files and (2) records are subject to FOIA and disclosable to the public. Anyone who wants to inspect or copy them must make his request to the agency. And, pursuant to FOIA, complaints must go to the Freedom of Information Commission.

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

*House Amendment "C" replaces the original file, which included an entity with a contract for a governmental function in the FOIA's definition of a "public agency," thereby making its records related to the contract disclosable to the public, and had a definition of "governmental function" specifying activities that were either included or excluded from the meaning of the term.

EFFECTIVE DATE: October 1, 2001

BACKGROUND***Court Decisions***

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.

In an earlier case, *Board of Trustees of Woodstock Academy et al. v. Freedom of Information Commission et al.*, 181 Conn. 544 (1980), the Connecticut Supreme Court established the criteria that have been used to determine the functional equivalence of a public agency for purposes of applying the FOIA. They are (1) whether the entity performs a governmental function, (2) the level of government funding, (3) the extent of government involvement or regulation, and (4) whether the entity was created by the government.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute
Yea 20 Nay 0