



Senate

General Assembly

File No. 308

January Session, 2007

Substitute Senate Bill No. 1064

Senate, April 4, 2007

The Committee on Government Administration and Elections reported through SEN. SLOSSBERG of the 14th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT ELIMINATING CERTAIN PRINTING REQUIREMENTS, ESTABLISHING PENALTIES FOR VIOLATIONS AND DEFINING "ADMINISTRATIVE FUNCTIONS" UNDER THE FREEDOM OF INFORMATION ACT.

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

1 Section 1. Section 1-205 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) There shall be a Freedom of Information Commission consisting
4 of five members appointed by the Governor, with the advice and
5 consent of either house of the General Assembly, who shall serve for
6 terms of four years from the July first of the year of their appointment,
7 except that of the members appointed prior to and serving on July 1,
8 1977, one shall serve for a period of six years from July 1, 1975, one
9 shall serve for a period of four years from July 1, 1975, and one shall
10 serve for a period of six years from July 1, 1977. Of the two new
11 members first appointed after July 1, 1977, one shall serve from the

12 date of such appointment until June 30, 1980, and one shall serve from
13 the date of such appointment until June 30, 1982. No more than three
14 members shall be members of the same political party.

15 (b) Each member shall receive two hundred dollars per day for each
16 day such member is present at a commission hearing or meeting, and
17 shall be entitled to reimbursement for actual and necessary expenses
18 incurred in connection therewith, in accordance with the provisions of
19 section 4-1.

20 (c) The Governor shall select one of its members as a chairman. The
21 commission shall maintain a permanent office at Hartford in such
22 suitable space as the Commissioner of Public Works provides. All
23 papers required to be filed with the commission shall be delivered to
24 such office.

25 (d) The commission shall, subject to the provisions of the Freedom
26 of Information Act promptly review the alleged violation of said
27 Freedom of Information Act and issue an order pertaining to the same.
28 Said commission shall have the power to investigate all alleged
29 violations of said Freedom of Information Act and may for the purpose
30 of investigating any violation hold a hearing, administer oaths,
31 examine witnesses, receive oral and documentary evidence, have the
32 power to subpoena witnesses under procedural rules adopted by the
33 commission to compel attendance and to require the production for
34 examination of any books and papers which the commission deems
35 relevant in any matter under investigation or in question. In case of a
36 refusal to comply with any such subpoena or to testify with respect to
37 any matter upon which that person may be lawfully interrogated, the
38 superior court for the judicial district of Hartford, on application of the
39 commission, may issue an order requiring such person to comply with
40 such subpoena and to testify; failure to obey any such order of the
41 court may be punished by the court as a contempt thereof.

42 (e) The Freedom of Information Commission, and the Department
43 of Information Technology with respect to access to and disclosure of
44 computer-stored public records, shall conduct training sessions, at

45 least annually, for members of public agencies for the purpose of
46 educating such members as to the requirements of sections 1-7 to 1-14,
47 inclusive, 1-16 to 1-18, inclusive, 1-200 to 1-202, inclusive, 1-205, 1-206,
48 1-210 to 1-217, inclusive, 1-225 to 1-232, inclusive, 1-240, 1-241 and 19a-
49 342.

50 (f) Not later than December 31, 2001, the Freedom of Information
51 Commission shall create, publish and provide to the chief elected
52 official of each municipality a model ordinance concerning the
53 establishment by any municipality of a municipal freedom of
54 information advisory board to facilitate the informed and efficient
55 exchange of information between the commission and such
56 municipality. The commission may amend the model ordinance from
57 time to time.

58 (g) When the General Assembly is in session, the Governor shall
59 have the authority to fill any vacancy on the commission, with the
60 advice and consent of either house of the General Assembly. When the
61 General Assembly is not in session any vacancy shall be filled
62 pursuant to the provisions of section 4-19. A vacancy in the
63 commission shall not impair the right of the remaining members to
64 exercise all the powers of the commission and three members of the
65 commission shall constitute a quorum.

66 (h) The commission shall, subject to the provisions of chapter 67,
67 employ such employees as may be necessary to carry out the
68 provisions of this chapter. The commission may enter into such
69 contractual agreements as may be necessary for the discharge of its
70 duties, within the limits of its appropriated funds and in accordance
71 with established procedures.

72 [(i) The commission shall make available to the public the printed
73 reports of its decisions, opinions and related materials at a reasonable
74 cost not to exceed the actual cost thereof to said commission but not
75 less than twenty-eight dollars per item.]

76 [(j)] (i) The Freedom of Information Commission shall not be

77 construed to be a commission or board within the meaning of section
78 4-9a.

79 Sec. 2. Section 1-200 of the general statutes is amended by adding
80 subdivision (12) as follows (*Effective from passage*):

81 (NEW) (12) "Administrative functions" means (A) all matters not
82 directly related to judicial activities in, and discussions concerning,
83 court cases, and (B) those matters that relate to the management of the
84 internal institutional machinery of the judicial branch and the Division
85 of Criminal Justice, including, but not limited to, budgeting,
86 accounting, rule-making, personnel, facilities, physical operations,
87 docketing and scheduling.

88 Sec. 3. Subdivision (2) of subsection (b) of section 1-206 of the
89 general statutes is repealed and the following is substituted in lieu
90 thereof (*Effective from passage*):

91 (2) In any appeal to the Freedom of Information Commission under
92 subdivision (1) of this subsection or subsection (c) of this section, the
93 commission may confirm the action of the agency or order the agency
94 to provide relief that the commission, in its discretion, believes
95 appropriate to rectify the denial of any right conferred by the Freedom
96 of Information Act. The commission may declare null and void any
97 action taken at any meeting which a person was denied the right to
98 attend and may require the production or copying of any public
99 record. In addition, upon the finding that a denial of any right created
100 by the Freedom of Information Act was without reasonable grounds
101 and after the custodian or other official directly responsible for the
102 denial has been given an opportunity to be heard at a hearing
103 conducted in accordance with sections 4-176e to 4-184, inclusive, the
104 commission may, in its discretion, impose against the custodian or
105 other official a civil penalty of not [less than twenty dollars nor more
106 than one thousand dollars] more than five hundred dollars for any
107 such first denial of any right created by the Freedom of Information
108 Act. Upon the commission's finding of a second such denial of any
109 such right which occurs not later than two years after such first denial,

110 the commission shall impose a civil penalty of not less than one
111 thousand dollars. Upon the commission's finding of a third or
112 subsequent such denial of any such right which occurs not later than
113 three years after such first denial, the commission shall impose a civil
114 penalty of not less than one thousand five hundred dollars. No such
115 mandatory civil penalty shall be imposed if such custodian or other
116 official demonstrates that such denial was made in good faith. If the
117 commission finds that a person has taken an appeal under this
118 subsection frivolously, without reasonable grounds and solely for the
119 purpose of harassing the agency from which the appeal has been
120 taken, after such person has been given an opportunity to be heard at a
121 hearing conducted in accordance with sections 4-176e to 4-184,
122 inclusive, the commission may, in its discretion, impose against that
123 person a civil penalty of not less than twenty dollars nor more than
124 one thousand dollars. The commission shall notify a person of a
125 penalty levied against him pursuant to this subsection by written
126 notice sent by certified or registered mail. If a person fails to pay the
127 penalty [within] not later than thirty days [of] after receiving such
128 notice, the superior court for the judicial district of Hartford shall, on
129 application of the commission, issue an order requiring the person to
130 pay the penalty imposed. If the executive director of the commission
131 has reason to believe an appeal under subdivision (1) of this subsection
132 or subsection (c) of this section (A) presents a claim beyond the
133 commission's jurisdiction; (B) would perpetrate an injustice; or (C)
134 would constitute an abuse of the commission's administrative process,
135 the executive director shall not schedule the appeal for hearing
136 without first seeking and obtaining leave of the commission. The
137 commission shall provide due notice to the parties and review
138 affidavits and written argument that the parties may submit and grant
139 or deny such leave summarily at its next regular meeting. The
140 commission shall grant such leave unless it finds that the appeal: (i)
141 Does not present a claim within the commission's jurisdiction; (ii)
142 would perpetrate an injustice; or (iii) would constitute an abuse of the
143 commission's administrative process. Any party aggrieved by the
144 commission's denial of such leave may apply to the superior court for

145 the judicial district of Hartford, [within] not later than fifteen days [of]
146 after the commission meeting at which such leave was denied, for an
147 order requiring the commission to hear such appeal.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	1-205
Sec. 2	<i>from passage</i>	1-200
Sec. 3	<i>from passage</i>	1-206(b)(2)

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 chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Freedom of Inf. Com.	GF - Revenue Gain	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill establishes a mandatory imposition of civil penalties against anyone who violates the Freedom of Information Act for the second and third time. These penalties would be not less than \$1,000 and \$1,500 respectively. This new civil penalty structure would result in a potential revenue gain to the state contingent upon the number and amount of civil penalties imposed by the Freedom of Information Commission. This revenue gain is not expected to be significant.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 1064*****AN ACT ELIMINATING CERTAIN PRINTING REQUIREMENTS, ESTABLISHING PENALTIES FOR VIOLATIONS AND DEFINING "ADMINISTRATIVE FUNCTIONS" UNDER THE FREEDOM OF INFORMATION ACT.*****SUMMARY:**

This bill makes changes to the Freedom of Information Act (FOIA). It (1) creates a definition of "administrative functions;" (2) reduces, from \$1,000 to \$500, the maximum possible civil penalty for anyone who violates the act for the first time; and (3) creates mandatory civil penalties for subsequent violations within certain timeframes. In addition, it removes a requirement for the Freedom of Information Commission to make printed reports of its decisions and opinions available to the public for not less than \$28. Instead, it codifies the commission's current practice of making reports available at no cost in either hard copy or electronic format.

The bill also makes technical changes.

EFFECTIVE DATE: Upon passage

ADMINISTRATIVE FUNCTIONS

By law, FOIA applies to the judicial branch and the Division of Criminal Justice, but only with respect to their administrative functions. However, "administrative function" is not currently defined in statute.

The bill defines "administrative functions" as (1) all matters not directly related to judicial activities in, and discussions concerning, court cases and (2) those matters relating to the management of the internal institutional machinery of the judicial branch and the Division of Criminal Justice, including budgeting, accounting, rulemaking,

personnel, facilities, physical operations, docketing, and scheduling (see BACKGROUND).

CIVIL PENALTIES

By law, anyone aggrieved by a public agency's decision to deny access to information subject to disclosure under FOIA may appeal to the Freedom of Information Commission.

The bill reduces the maximum discretionary civil penalty the commission may impose for a first-time violation from \$1,000 to \$500. It establishes mandatory minimum civil penalties of \$1,000 and \$1,500, respectively, for second and subsequent violations committed within two and three years of the first violation, respectively. It also bans the commission from imposing mandatory penalties for good faith violations.

Under current law, unchanged by the bill, the commission imposes civil penalties upon a finding that a member of the public was denied access to information or a meeting without reasonable grounds.

BACKGROUND

Administrative Functions

What constitutes an "administrative function" was at issue in a recent state Supreme Court decision. In *Clerk of the Superior Court, Geographical Area Number Seven v. Freedom of Information Commission*, 278 Conn. 28 (2006), the Court held that records related to the branch's adjudicatory functions are categorically exempt from disclosure and "administrative functions" are those relating to the branch's budget, personnel, facilities, and physical operations of the courts.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 7 Nay 5 (03/19/2007)