

**STATEMENT OF THE FREEDOM OF INFORMATION COMMISSION ON  
RAISED BILL NO 772, AN ACT CONCERNING THE FREEDOM OF  
INFORMATION ACT.**

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Good morning Senator Slossberg, Representative Spallone and members of the committee. I am Colleen Murphy, the Executive Director and General Counsel of the Freedom of Information Commission. I would like to comment on SB 772, An Act Concerning the Freedom of Information Act.

Public Act 08-03, which passed during June's special session, created the requirement that all public agencies post minutes and some meeting notices on their web sites. The passage of this law caused consternation in many corners of the state, especially in some of Connecticut's smaller cities and towns. The FOIC received numerous inquiries about the new law. Unfortunately, a number of towns simply shut down their web sites in an attempt to avoid dealing with the new requirement altogether. In response to that outcry, several entities, including the FOIC, members of GAE, representatives of the Connecticut Conference of Municipalities and the Council of Small Towns have met to try to clarify some of the provisions of the new law. While the FOIC supports the idea of a clarification to the law, as the saying goes, the "devil is in the details."

At least 12 bills already have been proposed that would alter or eliminate the new web site posting provisions. The bill before you today is one such bill. The FOIC is pleased that this bill does not, as some of the other proposals do, seek a complete repeal of the web site posting provisions (See, HB 5379 and SB 333). Nor does it extend the act's commencement date out three years until 2012 (See eg., HB 5218 and HB 5368). Those mechanisms for dealing with the newly imposed requirements ignore the good public policy reasons for passage of the law in the first instance and the simple fact that we, as a society, have become highly accustomed to getting critical information on the Internet.

The FOIC does have concerns with the bill as drafted. Lines 103-109 (which would add a subdivision (h) to Conn. Gen. Stat. §1-225) essentially exonerate a public agency for the period from October 1, 2008 (the original effective date of Public Act 08-03) until October 1, 2009, for any failure to follow the requirements of Public Act 08-03, as long as the agency "provides a reason" for its failure. It would appear that the intent of this provision is to move the effective date of the Public Act 08-03 from October 1, 2008 to October 1, 2009. However, if that is the intent, the better approach would be to say so directly. The FOIC does not object to giving agencies that are having trouble complying with the law more time to study and address their concerns about the new requirements. However, the bill as written will yield unnecessary formal complaints to the FOIC, which will require processing and adjudication, merely to ascertain whether an agency had "a

reason” for failing to comply. This will be both time-consuming and costly for both the agencies involved and the FOIC, which, in 2008 received 806 formal complaints.

The FOIC also has significant reservations about lines 110-117 (which would add a new subdivision (i) to Conn. Gen. Stat. §1-225). While it is understood that some of the state’s smaller communities might still have difficulties complying, the proposed language --- *no public agency shall be deemed to be in violation...for the failure to post minutes of such agency's sessions on the Internet web site of such public agency within seven days of the session to which such minutes refer, provided such public agency demonstrates a hardship to the Freedom of Information Commission which prevents such public agency from meeting such requirement* --- is overly broad.

The proposal begs the question: What would constitute a hardship? Would it be a fiscal hardship? Or would it be a hardship in terms of staffing and manpower? Would it be a technological hardship, meaning that the town lacked the technological expertise to comply? It seems that using this approach might leave the door open for public agencies to skirt the very well-intentioned purposes of the new law: more, easier access to government. It is not difficult to envision those agencies, who are resistant to change, spending more time creating hardships than tackling the issues of Internet access for their citizens.

If there is a desire to provide some relief to the smallest of towns, perhaps a better approach might be to tie compliance with population size, following the example set by Arizona, which requires electronic posting (of meeting notices) on web sites for cities and towns with populations over a certain size. (See A.R.S., §38-431.02(A)(4)). Or, if there is a desire to assist cities and towns that truly lack resources, perhaps a better approach would be to tie compliance to resources, following the example of Illinois, which requires agencies whose web sites are maintained by full time staff to post their agendas on-line (Public Act 94-0028) or Texas, which requires electronic filing of various items, by entities that maintain an Internet web site or have a web site maintained for them (Section 551.056).

The FOIC also notes the significant positive feedback it has had concerning the web site requirements. Many towns appear to be readily complying with the new law and actually report that their workloads have diminished because more people are using the web sites and not calling or visiting offices for agendas, notices and minutes. For those towns having difficulty with the new law, the FOIC has offered the services of its very limited IT staff (one part-time position at this time), to aid in technical compliance. (See the FOIC’s web site, [www.ct.gov/foi](http://www.ct.gov/foi)).

The FOIC welcomes the opportunity to continue to work with this committee and others to revise these two sections of the bill so that the new law will provide the access to government it is intended to create.