



**Testimony
Ralph Eno
Connecticut Council of Small Towns (COST)
Before the Government, Administration and Elections Committee
Legislative Office Building
February 2, 2009**

Good Morning Senator Slossberg, Representative Spallone and members of the Committee. Thank you for this opportunity to appear before you today. My name is Ralph Eno. I'm First Selectman in the Town of Lyme and my remarks this morning not only reflect the position of Lyme's Board of Selectmen but also the Connecticut Council of Small Towns. COST represents the interests of Connecticut's smaller rural and suburban communities, population 30,000 and under and I am privileged to have served on COST'S Board of Directors since the early '90's.

I am here today to offer testimony on **Raised Senate Bill 772, An Act Concerning the Freedom of Information Act**. The intent of the bill, as I understand it, is to modify last year's amendment to the Freedom of Information Act requiring municipalities to make their web sites compliant with FOIA provisions concerning the posting of agendas and minutes, as well as board and commission votes.

While well intentioned, the proposed legislation does not provide true mandate relief and COST cannot support it. In its present form, SB-772 merely provides that a town will not be deemed in violation of the mandate from October 1, 2008 through October 1, 2009 if it provides the FOI Commission with a reason for an alleged transgression. From this point on, a municipality must demonstrate a hardship to the Commission to avoid being cited for a violation of the website posting mandate. The outcomes of FOI Commission hearings are never certain and require not just a commitment of time but frequently the expenditure of funds for legal advice and representation.

I don't believe I can stress COST'S position strongly enough. Without a total repeal or funding, we are still faced with yet another unfunded mandate. The FOIA statute, as recently amended, unquestionably imposes additional COST's and burdens on communities statewide, especially small towns that do not have full time IT staff and traditionally rely on volunteers to take minutes and manage websites.

There is also no question that the mandate exposes municipalities to FOIA double jeopardy. The public's right to know was more than adequately protected by the statute before it was amended. Exposure to potential FOI complaints is being increased exponentially by virtue of the website mandate and state government has conveniently exempted itself from having to comply. Compounding the problem, the statute, in its present form is fraught with ambiguities. Attached to my testimony is COST'S request for an advisory opinion from the FOI Commission in which many of the grey areas were outlined. Our request was denied.

As an alternative which would provide real relief, COST respectfully requests that the Committee raise and pass HB 5379, "AN ACT CONCERNING POSTING OF INFORMATION ON WEB SITES BY MUNICIPALITIES." The bill has bipartisan support and would amend Section 1-225, C.G.S. "eliminate the mandate on towns requiring the posting of minutes and agendas of public agency meetings on town web site." Relief is spelled REPEAL!

October 3, 2008

State of Connecticut
Freedom of Information Commission
18-20 Trinity Street, 1st Floor
Hartford, CT 06106

To the Freedom of Information Commission:

The Connecticut Council of Small Towns ("COST") is writing on behalf of its member towns to respectfully request that the Freedom of Information Commission (the "Commission") issue an advisory opinion on changes that were made to the Connecticut Freedom of Information Act (Chapter 14 of the Connecticut General Statutes, the "FOIA") by Section 11 of Public Act 08-3 of the June 11 Special Session of the Connecticut General Assembly (the "Act"). COST is a statewide municipal services and support organization that represents the public policy interests and concerns of smaller towns and cities with less than 30,000 people. Currently, more than 85% of eligible Connecticut municipalities are members of COST. Since the Commission is the entity empowered to interpret and apply the FOIA, this advisory opinion is requested of the Commission so that COST member towns will be able to comply with the Act.

The Act amends FOIA at Section 1-225 of the 2008 supplement to the general statutes to require that (a) the minutes of all public agencies be "posted on such public agency's Internet web site, if available" and (b) the notice of a special meeting of every public agency "be posted not less than twenty-four hours before the meeting to which such notice refers on the public agency's Internet web site, if available."

Towns are accustomed to filing a paper copy of minutes and notices for special meetings with the town clerk or the clerk of a board or commission. However, the new requirement for posting this information on a town web site "if available" is not clear. The phrase "if available" is not clarified or defined in the Act, and has led to uncertainty as to its application. If the Commission could provide any overall clarification on this phrase and its application it would be extremely helpful.

In addition to this overall request for guidance, the following are some specific questions and/or examples of the application of the phrase "if available" to be considered by the Commission.

1. If a town has an Internet web site (which the majority of the COST member towns do have), but does not have a full-time webmaster, information technology (IT) or another person that is able and authorized to post information on the web site on a constant and consistent basis, then is the web site deemed "unavailable" so that posting of the minutes or notice of the special meeting is not required?

For example, some of the COST member towns have volunteer webmasters who spend a few hours each month updating the town website. These volunteers are not available on a daily basis. If a town agency, board or commission called a special meeting and the

volunteer webmaster is unavailable, is the town's Internet web site then considered "unavailable" so that posting on the web site is not required?

2. What if a town's website is down for maintenance or inoperable due to other factors beyond the towns' control, such as a power outage – is the web site then "unavailable"?
3. If the town forwards the minutes or agendas for meetings subject to the Internet posting requirements of Public Act 08-3 to its webmaster within the statutory timeframes, is the town in compliance with the law even if the webmaster fails to upload the documents to the website within the statutory timeframes?
4. If the public agency of the town is "autonomous" (e.g., a volunteer fire department or a housing agency) and therefore does not utilize the town's web site to provide information on its functions or activities, is the web site considered "unavailable" to it so that posting on the web site is not required?
5. What constitutes "such public agency's Internet web site" for purposes of Public Act 08-3. For example, if a board or commission does not have a web site separate from the town's, but information regarding the board, such as meeting dates, agendas, etc., is available through a web page that may be accessed from the town's web site, is that board or commission required to comply with the Internet posting requirements of Public Act 08-3?
6. What constitutes minutes for purposes of compliance with Section 1-225, C.G.S.? Specifically, if the minutes only reflect a record of the votes of each member on issues before the public agency, is the record of votes sufficient to constitute minutes under the law?
7. Which boards and commissions are subject to the requirements of Public Act 08-3? Are ad hoc boards considered public agencies for purposes of the law?

COST and its member towns understand that the goal of the FOIA is to ensure that citizens have access to government documents and advance notice of meetings of public agencies. Most COST member towns maintain web sites to provide timely, useful information to the public. However, some COST member towns have shut down or are contemplating "shutting down" their Internet web sites because they do not believe that they can comply with the changes required by the Act if further guidance and clarification is not provided. Therefore, COST and its member towns are hopeful that the Commission will consider this request for an advisory opinion and provide guidance on the changes contained in the Act.

Respectfully Submitted,

Barton Russell
Executive Director

