

**STATEMENT OF THE FREEDOM OF INFORMATION COMMISSION ON
RAISED BILL NO 365, AN ACT CONCERNING THE POSTING OF PUBLIC
AGENCY MINUTES AND LEGAL NOTICES ON THE INTERNET WEB SITE
OF A MUNICIPALITY.**

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The Commission offers the following comments on SB 365, An Act Concerning the Posting of Agency Minutes and Legal Notices on the Internet Website of a Municipality.

Section 1 of this proposal is not new. A year ago, similar proposals were considered in the wake of the passage of Public Act 08-03. That law, creating the requirement that all public agencies post minutes and some meeting notices on their websites, caused tremendous consternation in many corners of the state, especially in some of Connecticut's smaller cities and towns which claimed they lacked the resources to comply. That outcry led several entities, including the FOIC, members of GAE, representatives of the Connecticut Conference of Municipalities and the Council of Small Towns to meet to try to clarify some of the provisions of the new law. The end result in the 2009 session was SB 772, which was palatable to many of the concerned parties but did not win legislative approval

SB 365 mirrors many of the concepts in SB 772. It appears to be a rational approach to the issue, as opposed to some proposals that would repeal the provision completely or extend the commencement date for the new law far into the future. Those legislative proposals ignore the simple fact that we as a society are becoming more and more accustomed to getting critical information on the Internet.

This year's proposal extends from seven to 14 days, the deadline for posting agency meeting minutes on websites. SB 365 also removes the specter of an FOI violation for any public agency not meeting the letter of the law until January 12, 2012 if that agency follows a certain number of proscribed steps. This would give all agencies almost two more years to study and address their concerns about the new requirements. These seem to be reasonable compromises.

The FOIC does have some reservations about the language in the bill proscribing steps for agencies to avoid being in violation of the FOI Act.

- *no municipal public agency shall be deemed to be in violation of this chapter for failure to meet this requirement (1) for the period beginning October 1, 2008, and ending December 31, 2010, if such public agency files a notice with the town clerk of the applicable municipality indicating the reason for such failure, and (2) for the period beginning January 1, 2011, and ending January 1, 2012, following a vote of the applicable legislative body of such municipality, if such public agency files a*

notice with the commission describing the hardship that prevents such public agency from complying with such requirement. For informational purposes only, a copy of any notice filed with a town clerk pursuant to this subsection shall be filed with the commission.

Under the proposal, a public agency need only describe a hardship to forgo compliance with the FOI Act. It is not clear what would constitute a hardship. It is also not clear what is meant by the requirement that there be a vote of the applicable legislative body. Is it a town board or commission that must vote or must there be a town meeting or referendum vote?

The FOIC also feels compelled to ask a more basic question: Is this legislation necessary any longer? In the months since the initial outcry over PA 08-03, many towns that have worked to comply have contacted the FOIC and said that their workloads have diminished because more people are using the websites and are not calling or visiting offices for agendas, notices and minutes.

In addition, of the 12-15 towns that either shut down or threatened to shut down their websites after this new law took effect, only two are without websites. There also was concern expressed that the new law would trigger a flood of complaints about website postings. Since October 1, 2008, the FOIC has logged in more than 1,000 complaints and no more than 10 have had a website component to them (only three have actually been adjudicated, the others were resolved in one way or another). Perhaps, the law is working as intended.

If the committee moves forward with this proposal, the FOIC would like to ask it to consider an amendment that would enable the FOIC to dismiss any complaints it receives, without a hearing, if the public agency has followed the waiver requirements in the bill. This would result in administrative efficiency, as the FOIC would not need to spend time and effort processing and adjudicating such complaints. The FOIC has prepared suggested language along these lines for the committee's consideration.

Section 2 of SB 365 contains a provision that would allow municipalities to post legal notices on websites instead of having them printed in newspapers. It is said that this option will save municipalities the money it costs to pay for legal advertising. But the money saved might injure the public in other ways. As the Hartford Courant said in its February 8 editorial, "The cost to democracy would be serious and the public's right to know could be diminished." For, many individuals remain without access to the Internet and continue to rely on the printed word appearing in their newspapers, when it comes to legal notices. We would therefore urge defeat of this provision.