



# Senate

General Assembly

**File No. 616**

January Session, 2013

Substitute Senate Bill No. 1149

*Senate, April 24, 2013*

The Committee on Government Administration and Elections reported through SEN. MUSTO of the 22nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

**AN ACT MAKING TECHNICAL CHANGES TO THE STATUTE CONCERNING ACCESS TO PUBLIC RECORDS.**

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

1 Section 1. Section 1-206 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2013*):

3 (a) Any denial of the right to inspect or copy records provided for  
4 under section 1-210 shall be made to the person requesting such right  
5 by the public agency official who has custody or control of the public  
6 record, in writing, [within] not later than four business days [of] after  
7 such request, except when the request is determined to be subject to  
8 subsections (b) and (c) of section 1-214, in which case such denial shall  
9 be made, in writing, [within] not later than ten business days [of] after  
10 such request. Failure to comply with a request to so inspect or copy  
11 such public record within the applicable number of business days shall  
12 be deemed to be a denial.

13 (b) (1) Any person denied the right to inspect or copy records under  
14 section 1-210 or wrongfully denied the right to attend any meeting of a  
15 public agency or denied any other right conferred by the Freedom of  
16 Information Act may appeal [therefrom] such denial to the Freedom of  
17 Information Commission, by filing a notice of appeal with said  
18 commission. A notice of appeal shall be filed not later than thirty days  
19 after such denial, except in the case of an unnoticed or secret meeting,  
20 in which case the appeal shall be filed not later than thirty days after  
21 the person filing the appeal receives notice in fact that such meeting  
22 was held. For purposes of this subsection, such notice of appeal shall  
23 be deemed to be filed on the date it is received by said commission or  
24 on the date it is postmarked, if received more than thirty days after the  
25 date of the denial from which such appeal is taken. Upon receipt of  
26 such notice, the commission shall serve upon all parties, by certified or  
27 registered mail, a copy of such notice together with any other notice or  
28 order of [such] said commission. In the case of the denial of a request  
29 to inspect or copy records contained in a public employee's personnel  
30 or medical file or similar file under subsection (c) of section 1-214, the  
31 commission shall include with its notice or order an order requiring  
32 the public agency to notify any employee whose records are the subject  
33 of an appeal, and the employee's collective bargaining representative,  
34 if any, of the commission's proceedings and, if any such employee or  
35 collective bargaining representative has filed an objection under said  
36 subsection (c), the agency shall provide the required notice to such  
37 employee and collective bargaining representative by certified mail,  
38 return receipt requested or by hand delivery with a signed receipt. A  
39 public employee whose personnel or medical file or similar file is the  
40 subject of an appeal under this subsection may intervene as a party in  
41 the proceedings on the matter before the commission. Said commission  
42 shall, after due notice to the parties, hear and decide the appeal  
43 [within] not later than one year after the filing of the notice of appeal.  
44 The commission shall adopt regulations in accordance with chapter 54,  
45 establishing criteria for those appeals which shall be privileged in their  
46 assignment for hearing. Any such appeal shall be heard not later than  
47 thirty days after receipt of a notice of appeal and decided not later than

48 sixty days after the hearing. If a notice of appeal concerns an  
49 announced agency decision to meet in executive session or an ongoing  
50 agency practice of meeting in executive sessions, for a stated purpose,  
51 the commission or a member or members of the commission  
52 designated by its chairperson shall serve notice upon the parties in  
53 accordance with this section and hold a preliminary hearing on the  
54 appeal not later than seventy-two hours after receipt of the notice,  
55 provided such notice shall be given to the parties at least forty-eight  
56 hours prior to such hearing. During such preliminary hearing, the  
57 commission shall take evidence and receive testimony from the parties.  
58 If after the preliminary hearing the commission finds probable cause to  
59 believe that the agency decision or practice is in violation of sections 1-  
60 200 and 1-225, the agency shall not meet in executive session for such  
61 purpose until the commission decides the appeal. If probable cause is  
62 found by the commission, it shall conduct a final hearing on the appeal  
63 and render its decision not later than five days after the completion of  
64 the preliminary hearing. Such decision shall specify the commission's  
65 findings of fact and conclusions of law.

66 (2) In any appeal to the Freedom of Information Commission under  
67 subdivision (1) of this subsection or subsection (c) of this section, the  
68 commission may confirm the action of the agency or order the agency  
69 to provide relief that the commission, in its discretion, believes  
70 appropriate to rectify the denial of any right conferred by the Freedom  
71 of Information Act. The commission may declare null and void any  
72 action taken at any meeting which a person was denied the right to  
73 attend and may require the production or copying of any public  
74 record. In addition, upon the finding that a denial of any right created  
75 by the Freedom of Information Act was without reasonable grounds  
76 and after the custodian or other official directly responsible for the  
77 denial has been given an opportunity to be heard at a hearing  
78 conducted in accordance with sections 4-176e to 4-184, inclusive, the  
79 commission may, in its discretion, impose against the custodian or  
80 other official a civil penalty of not less than twenty dollars nor more  
81 than one thousand dollars. If the commission finds that a person has  
82 taken an appeal under this subsection frivolously, without reasonable

83 grounds and solely for the purpose of harassing the agency from  
84 which the appeal has been taken, after such person has been given an  
85 opportunity to be heard at a hearing conducted in accordance with  
86 sections 4-176e to 4-184, inclusive, the commission may, in its  
87 discretion, impose against that person a civil penalty of not less than  
88 twenty dollars nor more than one thousand dollars. The commission  
89 shall notify a person of a penalty levied against him pursuant to this  
90 subsection by written notice sent by certified or registered mail. If a  
91 person fails to pay the penalty within thirty days of receiving such  
92 notice, the superior court for the judicial district of Hartford shall, on  
93 application of the commission, issue an order requiring the person to  
94 pay the penalty imposed. If the executive director of the commission  
95 has reason to believe an appeal under subdivision (1) of this subsection  
96 or subsection (c) of this section (A) presents a claim beyond the  
97 commission's jurisdiction; (B) would perpetrate an injustice; or (C)  
98 would constitute an abuse of the commission's administrative process,  
99 the executive director shall not schedule the appeal for hearing  
100 without first seeking and obtaining leave of the commission. The  
101 commission shall provide due notice to the parties and review  
102 affidavits and written argument that the parties may submit and grant  
103 or deny such leave summarily at its next regular meeting. The  
104 commission shall grant such leave unless it finds that the appeal: (i)  
105 Does not present a claim within the commission's jurisdiction; (ii)  
106 would perpetrate an injustice; or (iii) would constitute an abuse of the  
107 commission's administrative process. Any party aggrieved by the  
108 commission's denial of such leave may apply to the superior court for  
109 the judicial district of Hartford, [within] not later than fifteen days [of]  
110 after the commission meeting at which such leave was denied, for an  
111 order requiring the commission to hear such appeal.

112 (3) In making the findings and determination under subdivision (2)  
113 of this subsection the commission shall consider the nature of any  
114 injustice or abuse of administrative process, including, but not limited  
115 to: (A) The nature, content, language or subject matter of the request or  
116 the appeal; (B) the nature, content, language or subject matter of prior  
117 or contemporaneous requests or appeals by the person making the

118 request or taking the appeal; and (C) the nature, content, language or  
119 subject matter of other verbal and written communications to any  
120 agency or any official of any agency from the person making the  
121 request or taking the appeal.

122 (4) Notwithstanding any provision of this subsection, [to the  
123 contrary,] in the case of an appeal to the commission of a denial by a  
124 public agency, the commission may, upon motion of such agency,  
125 confirm the action of the agency and dismiss the appeal without a  
126 hearing if it finds, after examining the notice of appeal and construing  
127 all allegations most favorably to the appellant, that (A) the agency has  
128 not violated the Freedom of Information Act, or (B) the agency has  
129 committed a technical violation of the Freedom of Information Act that  
130 constitutes a harmless error that does not infringe the appellant's rights  
131 under said act.

132 (c) Any person who does not receive proper notice of any meeting  
133 of a public agency in accordance with the provisions of the Freedom of  
134 Information Act may appeal under the provisions of subsection (b) of  
135 this section. A public agency of the state shall be presumed to have  
136 given timely and proper notice of any meeting as provided for in said  
137 Freedom of Information Act if notice is given in the Connecticut Law  
138 Journal or a Legislative Bulletin. A public agency of a political  
139 subdivision shall be presumed to have given proper notice of any  
140 meeting, if a notice is timely sent under the provisions of said Freedom  
141 of Information Act by first-class mail to the address indicated in the  
142 request of the person requesting the same. If such commission  
143 determines that notice was improper, it may, in its sound discretion,  
144 declare any or all actions taken at such meeting null and void.

145 (d) Any party aggrieved by the decision of said commission may  
146 appeal [therefrom] such decision, in accordance with the provisions of  
147 section 4-183. Notwithstanding the provisions of section 4-183, in any  
148 such appeal of a decision of the commission, the court may conduct an  
149 in camera review of the original or a certified copy of the records  
150 which are at issue in the appeal but were not included in the record of

151 the commission's proceedings, admit the records into evidence and  
152 order the records to be sealed or inspected on such terms as the court  
153 deems fair and appropriate, during the appeal. The commission shall  
154 have standing to defend, prosecute or otherwise participate in any  
155 appeal of any of its decisions and to take an appeal from any judicial  
156 decision overturning or modifying a decision of the commission. If  
157 aggrievement is a jurisdictional prerequisite to the commission taking  
158 any such appeal, the commission shall be deemed to be aggrieved.  
159 Notwithstanding the provisions of section 3-125, legal counsel  
160 employed or retained by said commission shall represent said  
161 commission in all such appeals and in any other litigation affecting  
162 said commission. Notwithstanding the provisions of subsection (c) of  
163 section 4-183 and section 52-64, all process shall be served upon said  
164 commission at its office. Any appeal taken pursuant to this section  
165 shall be privileged in respect to its assignment for trial over all other  
166 actions except writs of habeas corpus and actions brought by or on  
167 behalf of the state, including informations on the relation of private  
168 individuals. Nothing in this section shall deprive any party of any  
169 rights [he] such party may have had at common law prior to January 1,  
170 1958. If the court finds that any appeal taken pursuant to this section or  
171 section 4-183 is frivolous or taken solely for the purpose of delay, it  
172 shall order the party responsible therefor to pay to the party injured by  
173 such frivolous or dilatory appeal costs or attorney's fees of not more  
174 than one thousand dollars. Such order shall be in addition to any other  
175 remedy or disciplinary action required or permitted by statute or by  
176 rules of court.

177 (e) [Within] Not later than sixty days after the filing of a notice of  
178 appeal alleging violation of any right conferred by the Freedom of  
179 Information Act concerning records of the Department of Energy and  
180 Environmental Protection relating to the state's hazardous waste  
181 program under sections 22a-448 to 22a-454, inclusive, the Freedom of  
182 Information Commission shall, after notice to the parties, hear and  
183 decide the appeal. Failure by the commission to hear and decide the  
184 appeal within such sixty-day period shall constitute a final decision  
185 denying such appeal for purposes of this section and section 4-183. On

186 appeal, the court may, in addition to any other powers conferred by  
 187 law, order the disclosure of any such records withheld in violation of  
 188 the Freedom of Information Act and may assess against the state  
 189 reasonable attorney's fees and other litigation costs reasonably  
 190 incurred in an appeal in which the complainant has prevailed against  
 191 the Department of Energy and Environmental Protection.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2013	1-206

**Statement of Legislative Commissioners:**

In section 1(d) the provision changing "informations" to "information" was deleted for accuracy.

**GAE**      *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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**OFA Fiscal Note****State Impact:** None**Municipal Impact:** None**Explanation**

The bill, which makes technical changes to the Freedom of Information Act, has no fiscal impact.

**The Out Years****State Impact:** None**Municipal Impact:** None

**OLR Bill Analysis**

**sSB 1149**

***AN ACT MAKING TECHNICAL CHANGES TO THE STATUTE  
CONCERNING ACCESS TO PUBLIC RECORDS.***

**SUMMARY:**

This bill makes technical changes to the Freedom of Information Act.

EFFECTIVE DATE: October 1, 2013

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable

Yea 14 Nay 0 (04/05/2013)