

**THE FREEDOM OF INFORMATION COMMISSION'S STATEMENT
IN OPPOSITION TO RAISED BILL 1148, AN ACT REDEFINING "MEETING" FOR
PURPOSES OF THE FREEDOM OF INFORMATION ACT**

March 25, 2013

The Freedom of Information Commission ("FOIC") appreciates the opportunity to comment on Raised Bill 1148, An Act Redefining "Meeting" for Purposes of the Freedom of Information Act. The FOIC strongly opposes the bill.

Raised Bill 1148 would amend §1-200(2) of the general statutes to exclude from the meetings requirements in the Freedom of Information ("FOI") Act the following:

negotiations between members of different political parties who are in a leadership position, with respect to proposed legislation or a proposed action of the public agency to which such members belong, notwithstanding that such members also constitute a quorum of a public agency.

If passed, this bill would be a huge blow to open government in Connecticut. The legislature long ago determined that those appointed or elected to public office, and who take important actions affecting the public, have a duty to make those decisions in a public forum. Open meetings have long been a cornerstone of the FOI Act, and the open meeting provisions of the Act have been upheld many times over the years by our Supreme Court.

When the FOI Act was debated on the floor in 1975, Representative Martin Burke, the proponent of the bill, stated: "Mr. Speaker, members of the house, we have the opportunity to enact today, a broad and far-reaching freedom of information law. This act will hold its own with any right to know law in the nation. This bill will go a long way to restoring public confidence in government because we will conduct the public's business in public and not in the back room."

The bill passed unanimously in both the House and the Senate, and then went on to be signed by an enthusiastic Governor Ella Grasso, who stated at the signing: "It is a source of great satisfaction to me because I think it brings our state one step further. It is landmark legislation, it provides for open government, the symbol and the substance of action, it assures the protection of law to a procedure that should never would have required such protection, but nonetheless, now we know there will be the opportunity for access to information and for attendance at meetings... may I congratulate all of you."

The preamble to the Connecticut Freedom of Information Act, as first passed in 1975, states:

"The legislature finds and declares that secrecy in government is inherently inconsistent with a true democracy...that the people in delegating authority do not give their public servants the right to decide what is good for them to know and that *it is the intent of the law that*

actions taken by public agencies be taken openly and their deliberations be conducted openly and that the record of all public agencies be open to the public except in those instances where a superior public interest requires confidentiality.”

Thus, for thirty-eight years now, multi-member public agencies in Connecticut, such as Boards of Education, Town Councils, and Zoning Boards of Appeal, have deliberated in public on the actions they take, with a few limited exceptions set forth in the executive session provisions of the Act. For example, citizens have the opportunity to see why public officials make the decisions they do regarding education, town development, and zoning matters. The law has worked very well over all these years, and public agencies have managed to conduct their business in public, for all that time.

But Raised Bill 1148, would permit a quorum of a multi-member public agency such as, for example, a local town council, or the state Board of Regents of Higher Education, to meet, deliberate, and come to consensus on major decisions affecting the public, completely out of the public view, and with no public notice. Thus, citizens would be disenfranchised from the deliberations that went into the agency decision-making and would only have the right to attend later “rubberstamp” meetings. Why would the legislature take this giant step backward now? What is the *superior public interest* at this moment that requires confidentiality? This bill certainly might make life easier for public officials to be sure, but that is not a good enough reason to essentially nullify the open meetings law.

Over the years, the open meetings law has been subject to other attempted full-scale assaults, such as this. Thankfully, a strong legislature has always stepped in at such times to stop such attacks. For example, in 1986, a superior court decision opened up a large loophole in the law which would allow public agencies to enter executive session any time they wished to speak with their attorneys. The Legislature acted quickly and decisively, to close the loophole.

In a spirited debate on the floor at that time, Representative Richard Blumenthal stated: “What we are saying here is that there may also be issues of public policy that ought to be a matter of public debate....” Representative Christopher Shays stated: “When I was here a number of years ago...I remember Ella Grasso saying we are going to have open government and I remember that I thought, you know, it wasn’t all that significant. I mean, what is all the big fuss. And she got it through and the vast majority of democrats supported it and so did the republicans. And it was a good law. I now realize what a monumental thing she accomplished....” The House passed a rectifying bill by an overwhelming vote of 119 to 24 and the Senate passed it on consent. It was Public Act 86-266, now codified as Conn. Gen. Stat. §1-231(b), which provides that public agencies are limited in the matters they can discuss with their attorneys in private.¹

¹ In the 2012 legislative session, Senate Bill 389, An Act Redefining Executive Sessions under the Freedom of Information Act to Permit Certain Confidential Communications, was introduced seeking to reopen the attorney loophole, but was withdrawn before it was heard by this committee.

Indeed, the Legislature has grappled with the very issue presented in Raised Bill 1148 previously. Similar measures were offered in 1996 and 1997.² At those times, the FOIC presented testimony in opposition to the bills and noted that, in 1997, the FOI Act's open meeting provisions had been in effect for 22 years, with no apparent harm to the government's ability to conduct the public's business. Those bills did not pass, and in fact did not make it out of committee, again thanks to a vigilant legislature.

Now, it is 2013, and the open meetings provisions have been in place for almost 38 years. Raised Bill 1148 would open an even larger loophole than that which was at issue in 1986. There is no discernible reason to reverse course now by enacting this proposal. The FOIC's opposition to Raised Bill 1148, therefore, is based on strong public policy considerations. To allow decisions to be made by public agencies without giving the public access to the deliberations is unfair and contrary to the public policy of openness expressed in our FOI Act.

We urge the committee to again act strongly in favor of open and good government in Connecticut and defeat this bill.

For further information contact: Colleen M. Murphy, Executive Director and General Counsel or Mary Schwind, Managing Director and Associate General Counsel at (860) 566-5682.

² See Raised Bill 659, 1996 Session; Proposed Bill 160, 1997 Session; Proposed Bill 5846, 1997 Session.

