



House of Representatives

General Assembly

File No. 460

January Session, 2017

Substitute House Bill No. 7221

House of Representatives, April 6, 2017

The Committee on Public Health reported through REP. STEINBERG of the 136th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING ACCESS TO WATER PLANNING INFORMATION.

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

1 Section 1. Subdivision (19) of subsection (b) of section 1-210 of the
2 general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective October 1, 2017*):

4 (19) Records when there are reasonable grounds to believe
5 disclosure may result in a safety risk, including the risk of harm to any
6 person, any government-owned or leased institution or facility or any
7 fixture or appurtenance and equipment attached to, or contained in,
8 such institution or facility, except that such records shall be disclosed
9 to a law enforcement agency upon the request of the law enforcement
10 agency. Such reasonable grounds shall be determined (A) (i) by the
11 Commissioner of Administrative Services, after consultation with the
12 chief executive officer of an executive branch state agency, with respect
13 to records concerning such agency; and (ii) by the Commissioner of
14 Emergency Services and Public Protection, after consultation with the

15 chief executive officer of a municipal, district or regional agency, with
16 respect to records concerning such agency; (B) by the Chief Court
17 Administrator with respect to records concerning the Judicial
18 Department; and (C) by the executive director of the Joint Committee
19 on Legislative Management, with respect to records concerning the
20 Legislative Department. As used in this section, "government-owned
21 or leased institution or facility" includes, but is not limited to, an
22 institution or facility owned or leased by a public service company, as
23 defined in section 16-1, other than a water company, as defined in
24 section 16-1, a certified telecommunications provider, as defined in
25 section 16-1, [a water company, as defined in section 25-32a,] or a
26 municipal utility that furnishes electric [, gas or water] or gas service,
27 but does not include an institution or facility owned or leased by the
28 federal government, and "chief executive officer" includes, but is not
29 limited to, an agency head, department head, executive director or
30 chief executive officer. Such records include, but are not limited to:

31 (i) Security manuals or reports;

32 (ii) Engineering and architectural drawings of government-owned
33 or leased institutions or facilities;

34 (iii) Operational specifications of security systems utilized at any
35 government-owned or leased institution or facility, except that a
36 general description of any such security system and the cost and
37 quality of such system [,] may be disclosed;

38 (iv) Training manuals prepared for government-owned or leased
39 institutions or facilities that describe, in any manner, security
40 procedures, emergency plans or security equipment;

41 (v) Internal security audits of government-owned or leased
42 institutions or facilities;

43 (vi) Minutes or records of meetings, or portions of such minutes or
44 records, that contain or reveal information relating to security or other
45 records otherwise exempt from disclosure under this subdivision;

46 (vii) Logs or other documents that contain information on the
47 movement or assignment of security personnel; and

48 (viii) Emergency plans and emergency preparedness, response,
49 recovery and mitigation plans, including plans provided by a person
50 to a state agency or a local emergency management agency or official,
51 [; and

52 (ix) With respect to a water company, as defined in section 25-32a,
53 that provides water service: Vulnerability assessments and risk
54 management plans, operational plans, portions of water supply plans
55 submitted pursuant to section 25-32d that contain or reveal
56 information the disclosure of which may result in a security risk to a
57 water company, inspection reports, technical specifications and other
58 materials that depict or specifically describe critical water company
59 operating facilities, collection and distribution systems or sources of
60 supply;]

61 Sec. 2. Subsection (d) of section 1-210 of the general statutes is
62 repealed and the following is substituted in lieu thereof (*Effective*
63 *October 1, 2017*):

64 (d) Whenever a public agency, except the Judicial Department or
65 Legislative Department, receives a request from any person for
66 disclosure of any records described in subdivision (19) of subsection
67 (b) of this section under the Freedom of Information Act, the public
68 agency shall promptly notify the Commissioner of Administrative
69 Services or the Commissioner of Emergency Services and Public
70 Protection, as applicable, of such request, in the manner prescribed by
71 such commissioner, before complying with the request as required by
72 the Freedom of Information Act. [and for information related to a
73 water company, as defined in section 25-32a, the public agency shall
74 promptly notify the water company before complying with the request
75 as required by the Freedom of Information Act.] If the commissioner,
76 after consultation with the chief executive officer of the applicable
77 agency, [or after consultation with the chief executive officer of the
78 applicable water company for information related to a water company,

79 as defined in section 25-32a,] believes the requested record is exempt
80 from disclosure pursuant to subdivision (19) of subsection (b) of this
81 section, the commissioner may direct the agency to withhold such
82 record from such person. In any appeal brought under the provisions
83 of section 1-206 of the Freedom of Information Act for denial of access
84 to records for any of the reasons described in subdivision (19) of
85 subsection (b) of this section, such appeal shall be against the chief
86 executive officer of the executive branch state agency or the municipal,
87 district or regional agency that issued the directive to withhold such
88 record pursuant to subdivision (19) of subsection (b) of this section,
89 exclusively, or, in the case of records concerning Judicial Department
90 facilities, the Chief Court Administrator or, in the case of records
91 concerning the Legislative Department, the executive director of the
92 Joint Committee on Legislative Management.

93 Sec. 3. Subsection (b) of section 1-210 of the general statutes is
94 amended by adding subdivision (29) as follows (*Effective October 1,*
95 *2017*):

96 (NEW) (29) With respect to a water company, as defined in section
97 25-32a, that provides water service, records that identify, illustrate or
98 describe:

99 (A) Cybersecurity plans and measures, supervisory control and data
100 acquisition systems, information and communications systems, system
101 access codes and specifications, vulnerability assessments, internal
102 security audits, security manuals, security training or security reports,
103 including, but not limited to, security assessments, plans and
104 procedures, operational and design specifications of facility security
105 systems or risk management plans;

106 (B) Emergency contingency plans and emergency preparedness
107 plans, incident management plans, response, recovery and mitigation
108 plans or critical customer lists, including plans provided by a person to
109 a state agency or a local emergency management agency or official, or
110 documents or portions of documents that identify or describe
111 procedures for sabotage prevention and response;

112 (C) Specific locations, detailed schematics and construction details
113 of wells, source water intakes, water mains, tunnels, storage facilities,
114 treatment facilities or pump stations and pressure reducing stations,
115 and other distribution system pressure and flow control valves and
116 facilities, provided information regarding general location of water
117 mains, wells and interconnections shall be subject to disclosure;

118 (D) Dam specifications or dam safety plans;

119 (E) Building floor or structural plans, specifications of structural
120 elements or building security systems or codes;

121 (F) Detailed network topology maps;

122 (G) Specific locations of or specifications regarding electrical power,
123 standby generators or fuel systems for water system facilities, except
124 that general information regarding electrical power, standby
125 generators or fuel systems for water system facilities may be disclosed;

126 (H) Operational specifications, schematics and procedures of
127 treatment plant processes and associated equipment and chemicals,
128 including, but not limited to, facility use of chlorine gas storage and
129 delivery and the location of chemicals, except that a general
130 description of any such treatment plant may be disclosed;

131 (I) Logs or other documents that contain information regarding the
132 movement or assignment of water system facility and security
133 personnel;

134 (J) Distribution system hydraulic models; or

135 (K) Any other record if there are reasonable grounds to believe the
136 disclosure of such record may result in a security risk, including the
137 risk of harm to any person, provided the water company has obtained
138 a written determination from a public agency, as defined in section 4a-
139 77, having cognizance of such matter that there are such reasonable
140 grounds.

141 Nothing in this section shall be deemed to provide an exemption for all
142 or any part of a water company record if the water company has
143 released the information sought in the record, or the type of
144 information sought in the record, into the public domain after
145 September 1, 2003.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2017	1-210(b)(19)
Sec. 2	October 1, 2017	1-210(d)
Sec. 3	October 1, 2017	1-210(b)

Statement of Legislative Commissioners:

In Section 3(b)(29)(K), "section 4a-38c" was changed to "section 4a-77" for accuracy.

PH *Joint Favorable Subst.*

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.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which makes changes to the Freedom of Information Act (FOIA) exemption for certain water company records, has no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis

sHB-7221

AN ACT CONCERNING ACCESS TO WATER PLANNING INFORMATION.**SUMMARY**

This bill revamps the Freedom of Information Act (FOIA) exemption for certain water company records. Generally, it removes water company records from the coverage of an existing FOIA exemption that applies to all public agency records if reasonable grounds exist to believe that their release could pose a security risk. It instead creates a new exemption that identifies specific water company records that are exempt from disclosure under FOIA.

In addition to these specified records, the bill also exempts from disclosure any other water company record if there are reasonable grounds to believe that disclosure may result in a security risk. The water company must obtain a written determination from an executive branch state agency with cognizance of the matter that these reasonable grounds exist.

The bill specifies that a water company record is not exempt from disclosure if the company released the information or type of information sought into the public domain after September 1, 2003.

EFFECTIVE DATE: October 1, 2017

APPLICABILITY OF FOIA TO WATER COMPANY RECORDS

Under FOIA, a “public agency” is generally any (1) state, municipal, regional, or quasi-public agency, including any judicial office, or (2) entity that is the functional equivalent of such agencies (CGS § 1-200). The law defines a water company as any individual, municipality, or entity that owns, maintains, operates, manages, controls, or employs

any pond, lake, reservoir, well, stream, or distributing plant or system that supplies water to two or more consumers or to 25 or more people on a regular basis (CGS § 25-32a).

Thus, a water company itself is subject to FOIA if the company is a public agency. If a water company is not such a public agency, its records may still be subject to FOIA if they are submitted to a public agency (e.g., a water supply plan submitted to the Department of Public Health.)

The bill revamps the FOIA exemption for certain water company records, as described below.

CURRENT EXEMPTION

Exempt Records

Existing law exempts records from disclosure under FOIA when there are reasonable grounds to believe that disclosure may result in a safety risk, including the risk of harm to any government-owned or -leased institution or facility. Under current law, a government-owned or -leased institution or facility includes an institution or facility owned or leased by a water company. The bill removes water company-owned or -leased institutions and facilities from this exemption and instead establishes a new exemption specific to water companies (see EXEMPTION CREATED BY THE BILL below).

Records covered by existing law's exemption generally include security manuals or reports; operational specifications of security systems; and emergency plans and emergency preparedness, response, recovery, and mitigation plans. Water company records covered by this exemption include (1) vulnerability assessments and risk management plans; (2) operational plans; (3) portions of water supply plans that could result in a security risk if disclosed; (4) inspection reports; (5) technical specifications; and (6) other materials that depict or specifically describe critical water company operating facilities, collection and distribution systems, or supply sources.

Procedure for Determining Whether Exemption Applies

The bill makes a conforming change by eliminating the applicability to water company records of existing law's procedures for determining a security risk. Generally under these procedures, the administrative services or emergency services and public protection commissioner must determine whether there are reasonable grounds for a security risk after consulting with the chief executive officer of the agency with custody of the record. For water company records, the bill also eliminates requirements in current law that the (1) custodial agency notify the water company of the request and (2) respective commissioners consult with the water company's chief executive officer when determining if a security risk exists.

EXEMPTION CREATED BY THE BILL

The bill identifies the following water company records as exempt from disclosure:

1. cybersecurity plans and measures, supervisory control and data acquisition systems, information and communications systems, system access codes and specifications, vulnerability assessments, internal security audits, security manuals, security training or security reports, including security assessments, plans and procedures, operational and design specifications of facility security systems, or risk management plans;
2. emergency contingency plans and emergency preparedness plans, incident management plans, response, recovery, and mitigation plans or critical customer lists, including plans provided by a person to a state agency or a local emergency management agency or official, or documents or portions of documents that identify or describe procedures for sabotage prevention and response;
3. specific locations, detailed schematics and construction details of wells, source water intakes, water mains, tunnels, storage facilities, treatment facilities or pump stations and pressure reducing stations, and other distribution system pressure and

flow control valves and facilities, provided information regarding general location of water mains, wells and interconnections shall be subject to disclosure;

4. dam specifications or safety plans;
5. building floor or structural plans, specifications of structural elements, or building security systems or codes;
6. detailed network topology maps;
7. specific locations of or specifications regarding electrical power, standby generators or fuel systems for water system facilities, except that general information regarding electrical power, standby generators or fuel systems for water system facilities may be disclosed;
8. operational specifications, schematics and procedures of treatment plant processes and associated equipment and chemicals, including facility use of chlorine gas storage and delivery and the location of chemicals, except that a general description of the treatment plant may be disclosed;
9. logs or other documents that contain information regarding the movement or assignment of water system facility and security personnel; and
10. distribution system hydraulic models.

In addition to these specified records, the bill also exempts from disclosure any other water company record if there are reasonable grounds to believe that the disclosure of the record may result in a security risk, including the risk of harm to any person. The water company must obtain a written determination from an executive branch state agency with cognizance of the matter that there are such reasonable grounds. However, it is unclear how a water company would obtain this determination if the records are requested from an agency other than the company (e.g., the Department of Public

Health).

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 26 Nay 0 (03/24/2017)