

Government Administration and Elections Committee

JOINT FAVORABLE REPORT

Bill No.: HB-5175

AN ACT CONCERNING APPEALS UNDER THE FREEDOM OF INFORMATION

Title: ACT AND PETITIONS FOR RELIEF FROM VEXATIOUS REQUESTERS.

Vote Date: 3/9/2018

Vote Action: Joint Favorable Substitute

PH Date: 2/26/2018

File No.: 35

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SPONSORS OF BILL:

Government Administration and Elections Committee

REASONS FOR BILL:

To permit the Freedom of Information Commission to grant relief from vexatious requesters to public agencies. If it is determined that it is a vexatious request, there may be an order that the agency need not comply with future requests from the requester for a period of up to one year.

****Proposed Substitute Language: The new language adds to lines 108 to 109 “, including, among other factors, whether the request or appeal is repetitious or cumulative;”**

Adds lines 114 to 119 “; (D) any history of nonappearance at commission proceedings or disruption of the commission's administrative process, including, but not limited to, delaying commission proceedings; and (E) the refusal to participate in settlement conferences conducted by a commission ombudsman in accordance with the commission's regulations.”

Adds lines 130 to 161 “(5) Notwithstanding any provision of this subsection, a public agency may petition the commission for relief from a requester that the public agency alleges is a vexatious requester. Such petition shall be certified and shall detail the conduct which the agency alleges demonstrates a vexatious history of requests, including, but not limited to: (A) The number of requests filed and the total number of pending requests; (B) the scope of the requests; (C) the nature, content, language or subject matter of the requests; (D) the nature, content, language or subject matter of

other oral and written communications to the agency from the requester; and (E) a pattern of conduct that amounts to an abuse of the right to access information under the Freedom of Information Act or an interference with the operation of the agency. Upon receipt of such petition, the executive director of the commission shall review the petition and determine whether it warrants a hearing. If the executive director determines that a hearing is not warranted, the executive director shall recommend that the commission deny the petition without a hearing. The commission shall vote at its next regular meeting after such recommendation to accept or reject such recommendation. If the executive director determines that a hearing is warranted, the commission shall serve upon all parties, by certified or registered mail, a copy of such petition together with any other notice or order of the commission. The commission shall, after due notice to the parties, hear and either grant or deny the petition within one year after its filing. Upon a grant of such petition, the commission may provide appropriate relief commensurate with the vexatious conduct, including, but not limited to, an order that the agency need not comply with future requests from the vexatious requester for a specified period of time, but not to exceed one year. Any party aggrieved by the commission's granting of such petition may apply to the superior court for the judicial district of New Britain, within fifteen days of the commission meeting at which such petition was granted, for an order reversing the commission's decision."

RESPONSE FROM ADMINISTRATION/AGENCY:

Kevin Lembo, State Comptroller:

The State Comptroller testified in opposition of HB-5175 because it would apply an exorbitant \$125 fee on taxpayers and businesses seeking to challenge a denied Freedom of Information request.

Judicial Branch, State of Connecticut:

The Judicial Branch has no position on the bill. It recommended a technical change in which all three references to filing in the Hartford Judicial District should be changed to the New Britain Judicial District to make it clear that FOIA administrative appeals should no longer be filed in Hartford.

Colleen M. Murphy, Executive Director and General Counsel, Freedom of Information (FOI) Commission:

The FOI Commission opposes Raised Bill 5175 to the extent it imposes a \$125 filing fee, and further opposes the "mandatory mediation" portion of the proposal, as written.

The Commission endorses the concepts proposed for Section 1-206 giving the Commission greater authority to reject frivolous or vexatious complaints and help public agencies turn away vexatious requesters.

The Commission remains open to working with Committee members to draft a mutually agreeable proposal.

NATURE AND SOURCES OF SUPPORT:

Rep. Adam Dunsby:

Rep. Dunsby testified in support of HB-5175. The public's right to records must not be transformed into a right to harass and burden public officials.

He requested that the language in Section 1 (b) (1) remain unchanged, and he does not support a filing fee for a complaint.

Janet Ainsworth:

Ms. Ainsworth testified in support of HB-5175. While working in government, she has seen individuals file frequent and voluminous requests that take up the staffs' time and are usually followed up with complaints.

Connecticut Conference of Municipalities (CCM):

CCM testified in support of HB-5175, as it will give towns and cities will have a process which they can utilize to save limited tax payer dollars.

CCM offered a recommendation that language related to fees and mandatory mediation be removed and the Committee approve HB 5175 with the limited scope of allowing the FOIC to identify and offer restrict for a limited time period requesters that is has determined to be vexatious.

Betsy Gara, Executive Director, Connecticut Council of Small Towns (COST):

COST testified in support of HB-5175 to ensure an open and transparent process without allowing individuals to harass municipal officials.

COST does not support the language in Section 1(b)(1) of the bill which creates a filing fee and request that this be deleted.

Police Officers Association of CT (POACT):

The Police Officers Association of CT testified in support of HB-5175 in order to protect police officers' personal information, such as their home address, and to protect them and their families from harassment.

POACT particularly supports subdivision (b)(5) of Section 1.

NATURE AND SOURCES OF OPPOSITION:

Daniel Klau, President, Connecticut Council on Freedom of Information:

Mr. Klau opposes HB-5175 as it imposes a filing fee of \$125 for each complaint after the first one in a given year.

It would deter citizens from exercising their rights under the FOIA, and would likely embolden state agencies to deny more requests for public records in the hopes that the requestor will not want to pay to file a complaint with the FOIC.

David Godbout:

Mr. Godbout testified in opposition of HB-5175. He claims the bill notes that two requests for records on different dates from agencies and/or more than one complaint of separate violations of the Act to the commission will be null and voided. The proposal would result in a citizen looking and getting to view a record for only a single time in the person's lifetime.

Included in his testimony were two attachments. One is for a case that is currently pending before the FOI Commission, and the other is previous testimony on this issue.

Kaley Lentini, Legislative Council, ACLU Connecticut:

Ms. Lentini testified in opposition of HB-5175, as the filing fee would stifle government transparency and accountability.

Anne Manusky:

Ms. Manusky testified in opposition and voiced her concerns with the bill. She believes that charging fees will change the way an agency can deny record requests, therefore giving the FOI Commission discretionary choices.

Alex Ruskewich:

Mr. Ruskewich opposes HB-5175 because it is an attempt to limit CT citizens' rights to information rather than ensuring their rights.

Mike Savino, President, Connecticut Society of Professional Journalists (CT SPJ):

The Connecticut SPJ opposes HB-5175 due to the \$125 filing fee, as it would provide an incentive for municipalities to deny requests for information it does not wish to disclose.

CT SPJ does support the changes proposed in section 5 of this bill, which give the Commission some flexibility to address vexatious complaints and relief to municipalities, without prohibiting or deterring the public from exercising its right to access information.

Reported by: Molly Ronan / Susan Tufts

Date:4/5/2018