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1 message

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Tue, Mar 15, 2011 at 7:47 AM

'Vexatious' or vindictive?

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Created: Tuesday, March 15, 2011 5:30 a.m. CDT

Home and Housewares ShowA bill before the Illinois Senate would allow local governments to significantly delay responses to Freedom of Information Act requests they deem "vexatious."

To supporters, Senate Bill 1645 is needed to help local governments being bombarded by FOIA requests as a harassment tactic rather than legitimate requests for information. Government watchdog groups said the rules as proposed would be misused by governments to stymie legitimate requests for records.

The bill essentially limits people to filing no more than 15 FOIA requests in a year, or five within 30 days, with any particular public body. Governments can declare subsequent requests as "vexatious" and respond to them in 21 days, rather than the five-day maximum under the present law. The bill also grants governments much more latitude in their responses to such requests, and strips the requesters' right for the Attorney General Public Access Counselor to review denials.

Sen. Ed Maloney, who sponsored the bill, said that some of the municipalities in his district had been hit hard by FOIA requests meant to intimidate. In Alsip, for instance, one person filed 90 FOIA requests in a single day, Maloney said.

"Some [FOIAs] are legitimate, and others are meant to harass, and we're trying to strike that balance," said Maloney, D-Chicago.

But to Woodstock attorney and frequent FOIA filer Jane Collins, the proposed rule is ripe for abuse. A government that does not want to release public records, she said, would reap the additional benefit of getting people persistent in wanting them labeled vexatious. Collins said she often was forced to file FOIAs for information that automatically should be handed over.

"It will make it easier for government to keep things under wraps. The few people who ask the inconvenient and uncomfortable questions are going to be muzzled," Collins said. "It's a way to take away the public's right to know."

The General Assembly in 2009 significantly bolstered the state FOIA after the arrest and impeachment of former Gov. Rod Blagojevich. The bill shortened the response time to five business days, gave the public access counselor binding authority to enforce it, and for the first time imposed penalties for breaking the law.

An amendment to Senate Bill 1645 exempts the news media, but the Illinois Press Association, of which the Northwest Herald is a member, still has concerns, Government Relations Director Josh Sharp said.

"Even though the media are exempt from it, I still feel it's bad public policy for people who file more than 15 FOIA requests to be labeled as 'vexatious,'" Sharp said.

The bill passed the Senate Executive Committee on Friday by a 10-4 vote. Among those asked by Maloney and the Illinois Municipal League to testify was Woodstock Mayor Brian Sager. While Sager conceded Monday that the bill needed "significant work," the issue of FOIA abuse by requesters was a real one that had to be addressed.

"I do acknowledge there are governmental units that are not as forthright and open as what they can be or should be, but on the other side of the coin, there are individuals who have for whatever reason a challenge with a unit of government and will try to throw a wrench in the works," Sager said.

But to Collins, the solution is not slapping an arbitrary number on requesters. She said lawmakers were asking the wrong questions of public bodies upset with FOIA requests.

"They're asking, 'What's the number [of requests],' not the substance of the request, and why are people having to ask for these things? Why do people have to ask for the information? Why isn't it out there voluntarily?" Collins said.

Since January, lawmakers have filed at least 14 bills aimed at curtailing FOIA and the Open Meetings Act.

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About this series

"No More Excuses" is an ongoing series by the Northwest Herald about the public's right to know in Illinois.

Today's report is the second of three about Sunshine Week, an annual initiative to bring attention to the importance of open government.

On the net

To learn about the Illinois Open Meetings Act and the Illinois Freedom of Information Act, visit foia.ilattorneygeneral.net.