

**FINAL REPORT
PUBLIC ACCESS AND ACCOUNTABILITY LEGISLATION
CONNECTICUT GENERAL ASSEMBLY
2019 REGULAR SESSION**

By
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Summary of Legislative Session:

During the 2019 legislative session, there were numerous proposals introduced that would impact transparency and open government in Connecticut. Among those proposals of significant concern were (1) the approval of an arbitration award containing provisions superseding the public records requirements within the Freedom of Information (“FOI”) Act, and (2) the establishment of a nonprofit corporation and governing board which appear to perform a governmental function, and yet are not subject to certain ethics and disclosure laws.

Interest Arbitration Award between the State of Connecticut and State Police Union:

With only a few weeks left in the session, the General Assembly took up Senate Resolution 30 and House Resolution 33, proposing, and ultimately approving, an interest arbitration award between the State of Connecticut and the State Police Union (NP-1) that contains provisions superseding the public records requirements within the FOI Act. Specifically, Article 9 of the agreement exempts from disclosure the personnel files and internal affairs investigations of state troopers, with limitations. The Commission objected to those provisions arguing that records relating to a public employee’s ability to perform his or her duties, or an investigation of alleged misconduct are legitimate matters of public concern. The Commission believes that even where an investigation results in exoneration, there may be a legitimate public interest in an alleged abuse of power while engaged in the performance of official police duties. There is also a legitimate public interest in knowing the manner in which investigations about public employees are conducted.

The public’s right to access public records and meetings should not be contracted away by arbitration awards and collective bargaining agreements. Rather, such decisions should only be made after robust debate, deliberation, and enactment of statute.

Establishment of “The Partnership for Connecticut, Inc.” and Governing Board:

At the very end of the session, the General Assembly passed House Bill 7424, *An Act Concerning the State Budget for the Biennium Ending June Thirtieth, 2021, and Making Appropriations Therefor, and Implementing Provisions of the Budget*. Sections 183 through 189 of the bill, which never received a public hearing, establish “The Partnership for Connecticut, Inc.,” a nonprofit corporation, and a 13-member governing board. The board, which will include five state officials (i.e., the Governor, House Speaker, Senate President Pro Tem, and House and

Senate minority leaders) will oversee the expenditure of a \$100 million contribution from the philanthropic foundation of Raymond Dalio, a matching \$100 million allocation of taxpayer money and another \$100 million contributed by other private donors over the next five years. Such funds are to be allocated for improvements in public education.

Under House Bill 7424 “no member of the board of directors or any officer or employee of the corporation shall, by virtue of such service to the corporation, be (1) a state employee or public official for purposes of part I of chapter 10 of the general statutes, or (2) a state contractor or prospective state contractor for purposes of section 9-612 of the general statutes.” In addition, House Bill 7424 provides that “[t]he corporation shall not be construed to be a department, institution, public agency, public instrumentality or political subdivision of the state, or to perform any governmental function.”

The Commission is concerned that there will be a lack of transparency and accountability with respect to how the corporation and board function and allocate funds. The Commission believes this sets a dangerous precedent and agrees with a sentiment expressed by Representative Vincent J. Candelora, R-North Branford, and quoted in *The Connecticut Mirror*: “Since when are tax dollars not subject to complete transparency?”¹

There were numerous amendments filed in an attempt to subject the corporation to the FOI Act. Unfortunately however, such amendments were unsuccessful.

Below is a brief description of additional bills of note:

BILLS PASSED – FAVORABLE RESULTS

SB 380; P.A. 19-90. AN ACT CONCERNING THE USE OF FORCE AND PURSUITS BY POLICE AND INCREASING POLICE ACCOUNTABILITY AND TRANSPARENCY.

Senate Bill 380, as passed, provides for greater transparency relating to law enforcement’s use of force and access to body-worn and dashboard camera recordings. Under the bill, each law enforcement unit must prepare and submit a use of force report to the Office of Policy and Management’s Division of Criminal Justice Policy and Planning, on an annual basis. In addition, the bill requires the disclosure to the public of certain body-worn and dashboard camera recordings not later than 48 hours after an officer has an opportunity to review it, or if the officer does not review the recording, not later than 96 hours after the incident, whichever is earlier.²

¹ See <https://ctmirror.org/2019/06/04/speaker-defends-exemption-for-panel-overseeing-dalio-investment-in-schools/>.

² Under existing law, certain body-worn camera recordings are not subject to disclosure under the FOI Act if they contain: (1) communications with other law enforcement personnel, unless within the performance of their duties; (2) encounters with undercover officers or informants; (3) when an officer is on break or is otherwise engaged in a personal activity; (4) a person undergoing a medical or

The bill also establishes a 13-member task force to study police transparency and accountability. At present, the bill does not include as a member of the task force anyone from the FOI Commission or access community.

BILLS PASSED – UNFAVORABLE RESULTS

SB 3; P.A. 19-16. AN ACT COMBATTING SEXUAL ASSAULT AND SEXUAL HARASSMENT.

Senate Bill 3, as passed, limits the disclosure of documents relating to the investigation of discrimination complaints made against a state entity. Specifically, the bill prohibits a person designated by the state entity as an equal employment opportunity officer, who is responsible for investigating such complaints, from disclosing witness statements or documents received or compiled in conjunction with the investigation until the conclusion of such investigation. Disclosures may be made to personnel charged with investigating the complaint or to the Commission on Human Rights and Opportunities upon request.

SB 1105; P.A. 19-43. AN ACT CONCERNING THE CONFIDENTIALITY OF LAW ENFORCEMENT RECORDS CONCERNING VICTIMS OF SEXUAL ASSAULT AND FAMILY VIOLENCE.³

Senate Bill 1105, as passed, amends §§1-210(b)(3) and 1-215(b) of the FOI Act to allow the withholding of identifying information of victims of sexual assault and family violence contained in law enforcement records.

The Commission did not object to the nondisclosure of the names and addresses of victims. However, the Commission expressed concern that Senate Bill 1105 may have the serious unintended consequence of leading to some “secret” arrests and prohibiting the disclosure of information regarding persons arrested for family violence. The proposed language is also inconsistent with §1-215, G.S., which requires the disclosure of the name and address of the person arrested, in all circumstances, from the time of arrest.

psychological evaluation, procedure or treatment; (5) any person, other than a suspect, in a hospital or other medical facility setting; (6) those in a mental health facility, unless in response to a call involving a suspect present in the facility; (7) a minor; or (8) certain crime victims (e.g., domestic or sexual abuse) if it could reasonably be expected to constitute an unwarranted invasion of personal privacy . See Conn. Gen. Stat. §29-6d.

³ Notably, during the 2010 legislative session, the Public Safety and Security Committee took up Raised Bill 5344, *An Act Concerning the Nondisclosure of Information Regarding Persons Arrested for Domestic Violence*, which proposed to prohibit the disclosure of information regarding persons arrested for domestic violence. The Commission, CT Coalition against Domestic Violence and Office of the Victim Advocate all opposed the bill for several reasons, including the concern that it would allow perpetrators of domestic violence to keep their identities secret and to remain in the shadows, even if arrested. Raised Bill 5344 was not voted out of committee.

Significantly, during the House discussion on Senate Bill 1105, legislators clarified through questions and answers that while the bill is intended to protect victims, it is not intended to shield the names of people who are arrested and charged with a family violence crime.

The bill passed unanimously in the Senate and House.

HB 7424, AN ACT CONCERNING THE STATE BUDGET FOR THE BIENNIUM ENDING JUNE THIRTIETH, 2021, AND MAKING APPROPRIATIONS THEREFOR, AND IMPLEMENTING PROVISIONS OF THE BUDGET.

See discussion above.

RESOLUTIONS PASSED - UNFAVORABLE RESULTS

SR 30, RESOLUTION PROPOSING APPROVAL OF AN INTEREST ARBITRATION AWARD BETWEEN THE STATE OF CONNECTICUT AND THE CONNECTICUT STATE POLICE UNION (NP-1) &

HR 33, RESOLUTION PROPOSING APPROVAL OF AN INTEREST ARBITRATION AWARD BETWEEN THE STATE OF CONNECTICUT AND THE CONNECTICUT STATE POLICE UNION (NP-1).

See discussion above.

BILLS DEFEATED - FAVORABLE RESULTS

SB 970, AN ACT CONCERNING THE CONFIDENTIALITY OF EVIDENCE SEIZED IN A CRIMINAL INVESTIGATION.

Senate Bill 970 sought to limit access to records seized in connection with an arrest or warrant. Specifically, Senate Bill 970 sought to reverse the Supreme Court's decision in Commissioner of Emergency Services and Public Protection v. Freedom of Information Commission, 330 Conn. 372 (2018), that records seized in connection with an arrest or warrant are public records, subject to disclosure under the FOI Act.⁴ In Commissioner of Emergency Services and Public Protection, the Supreme Court upheld the FOI Commission's decision ordering the State Police to disclose records seized from the home of the Sandy Hook shooter. Under Senate Bill 970, as proposed, the public would have been less informed on such an important investigation.

⁴ Significantly, the underlying Commission decision was based on a specific factual scenario: the records seized from the shooter's home informed the law enforcement investigation into the shooting; there was intense public interest in understanding the motives of the shooter; and it had been quickly determined by law enforcement that there would be no criminal prosecution. Indeed, the State Police later wrote an investigative report available to the public which referenced many of the records collected at the shooter's home.

The FOI Commission argued that, especially in instances where significant public resources are spent on investigations of great public concern, such as the Sandy Hook investigation, the public interest in evidence which informs the investigation, or which may be incorporated by reference into a summary report, should override privacy concerns which might be at issue. No allowance for such a public interest was contained in Senate Bill 970. The Commission did acknowledge that there may be instances when certain “private” property that is seized from an individual’s home is not pertinent to the criminal investigation and therefore does not inform such investigation. In those instances, disclosure of such property may not be appropriate for public disclosure.

The Commission was also concerned that the proposal lacked any temporal limitation, and that certain provisions were broad and unclear. For example, under the proposed language, even documentary evidence that consists of public records created by government would automatically be exempt from disclosure by virtue of the fact that they were seized in connection with a criminal arrest or investigation.

Senate Bill 970 never made it out of the Judiciary Committee.

HB 7321, AN ACT CONCERNING ELECTIONS AND SECURITY &

HB 7392, AN ACT CONCERNING VOTER PRIVACY.

House Bill 7321 and HB 7392 are among numerous bills considered by the Legislature in recent years proposing to limit access to voter registration information.⁵

Under House Bill 7321, whenever voter registration information maintained under Title 9 of the general statutes was disclosed, the disclosure of a voter’s date of birth would be limited to only the year of birth, unless such voter registration information was requested and used for a governmental purpose, as determined by the Secretary of the State, in which case the voter’s complete date of birth would be provided. In addition, under House Bill 7321, if a voter simply submitted to the Secretary of State a “signed statement” that nondisclosure of such voter’s name from the official registry was “necessary” for the safety of such voter or the voter’s family, the voter’s name and address on his or her voter registration record would be confidential and not disclosed.

⁵ Similar efforts to limit access to voter registration information were made during the 2015, 2016, 2017 and 2018 legislative sessions, respectively. *See e.g.*, Senate Bill 27, *An Act Prohibiting the Internet Publication of Voter Information* (2015); Senate Bill 703, *An Act Exempting Voter Personally Identifiable Information from the Freedom of Information Act* (2015); House Bill 5169, *An Act Prohibiting the Disclosure of Voter Birth Date Information* (2015); House Bill 5789, *An Act Protecting Voter Privacy* (2015); House Bill 6098, *An Act Protecting the Identity of Law Enforcement Officers* (2015); House Bill 5613, *An Act Prohibiting Disclosure of Date of Birth Information on Voter Records* (2016); House Bill 5616, *An Act Concerning Notices and Public Information* (2016); House Bill 5947, *An Act Protecting the Identity of Law Enforcement Officers* (2017); House Bill 5173, *An Act Protecting the Privacy of Voters* (2018); and House Bill 5176, *An Act Protecting Municipal Police Officers and their Families* (2018).

Similarly, under House Bill 7392, candidate and political committees would have limited access to voter registration information. The disclosure of a voter's date of birth would be prohibited. House Bill 7392 also provided that once registration information was disclosed, it could not be used for any commercial purpose (e.g., advertising, solicitation, sales, marketing).

Supporters of the bills argued that limiting access to voter information was necessary to protect the identity, privacy and safety of individuals. The FOI Commission, among others, objected and advocated that transparency in the area of voter information is important because transparency (1) is meant to deter voter fraud and provide a means to detect it; and (2) guards against election fraud by ensuring that registration and election officials, who are charged with entering, updating and maintaining voter data, are accountable, and carry out their roles in accordance with the law. Dates of birth are necessary to determine voter eligibility and to guard against voter fraud, and at a minimum, the month and year of birth should be disclosed.

With respect to House Bill 7321, there were also concerns that it would empower one public official to be the sole determiner of what is a "governmental purpose" and could lead to abuse in the future. In addition, there were concerns that simply requiring a "signed statement", without more, could lead to abuse.

House Bill 7321 made it out of the Government Administration and Elections ("GAE") Committee with substitute language, and was then referred by the House to the Appropriations Committee. The bill was not voted out of Appropriations.

House Bill 7392 did not make it out of committee.

BILLS DEFEATED – UNFAVORABLE RESULTS

HB 6876, AN ACT CONCERNING THE COPYING OF PUBLIC RECORDS BY USING A HAND-HELD SCANNER.

House Bill 6876, as originally written, sought to update §1-212 of the FOI Act (i.e., handheld scanner provision) to include cellphones and cameras. The bill also proposed a new fee structure under which a requester could copy: the first 200 pages free of charge; 201 to 500 pages at a cost of \$10; and any number of pages exceeding 500 pages for \$20.

House Bill 6876 seemed reasonable to the FOI Commission, as it allowed for greater access to public records at modest cost to the public. The proposal would have also likely reduced the amount of agency time and resources spent copying public records in response to FOI requests.

House Bill 6876 made it out of the GAE Committee with substitute language prohibiting state agencies and municipalities from charging a fee for copying public records using a handheld scanner, and with a fiscal note. The Office of Fiscal Analysis ("OFA") identified the anticipated revenue loss for the state as less than \$5,000 annually. As for the anticipated revenue loss for municipalities, the OFA noted that such loss could vary significantly based on the size of the municipality (e.g., City of Waterbury could experience a revenue loss of at least \$100,000, while

the Town of West Hartford could experience a revenue loss of at least \$40,000).⁶ These claims regarding revenue loss likely led to the bill's demise.

The bill was later referred to the Planning and Development Committee, which took no action.

HB 7211, AN ACT CONCERNING THE PRESERVATION OF HISTORICAL RECORDS AND ACCESS TO RESTRICTED RECORDS IN THE STATE ARCHIVES.⁷

House Bill 7211 aimed to preserve records of historical value and to provide greater access to government records deposited at the state archives, after statutorily prescribed periods of time.

Specifically, Section 1 of the bill required the retention for posterity of any record transferred to the state archives (as established in Conn. Gen. Stat. §11-1c) that the State Archivist determines to be a record of historical value, and vests title to such record in the state archives. Section 2 of the bill lifted any prohibition against viewing a government record that has been deposited in the state archives after 50 years, or, if the record relates to a natural person, after 50 years of the death of such person, whichever is later.

Supporters of the bill maintained that government and medical records deposited at the state archives have significant historical and research value, and that the preservation and availability of such records, increases transparency in government. Opponents of the bill argued that disclosure of such records would invade the privacy of the deceased individuals and their family members and discriminate against those individuals receiving public services.

House Bill 7211 received a public hearing, but did not make it out of committee.

NEUTRAL BILLS

SB 702, P.A. 19-30. AN ACT CONCERNING THE TRANSFER OF LAW ENFORCEMENT AGENCY RECORDS BETWEEN AGENCIES.

Senate Bill 702 aimed to shield law enforcement agencies from any liability arising from the release of information by any other law enforcement agency with whom records are shared. The Commission argued that such proposal was unnecessary given that a public agency that legally

⁶ OFA Fiscal Note for House Bill 6876: <https://www.cga.ct.gov/2019/FN/pdf/2019HB-06876-R000063-FN.pdf>.

⁷ Similar bills were introduced during the 2014, 2016 and 2017 legislative sessions, respectively: HB 5124, *An Act Concerning the Preservation of Historical Records and Access to Restricted Records in the State Archives* (2014); HB 5499, *An Act Concerning the Preservation of Historical Records and Access to Restricted Records in the State Archives* (2016); HB 5735, *An Act Concerning Access to Public Records in the State Archives* (2017); and HB 7188, *An Act Concerning the Preservation of Historical Records and Access to Restricted Records in the State Archives* (2017).

discloses public records is generally not responsible for another public agency's improper disclosure. The Commission was also aware though that through the years, law enforcement agencies have been hesitant to release reports to other law enforcement agencies out of fear that if the other law enforcement agency was to improperly release such reports or portions thereof, the originating agency would be held liable for such release. For that reason, the Commission did not oppose Senate Bill 702.

Senate Bill 702 unanimously passed the Senate and House.

SB 869, P.A. 19-123: AN ACT CONCERNING RECOMMENDATIONS BY THE CONNECTICUT AIRPORT AUTHORITY REGARDING NONBUDGETED EXPENDITURES, THE CONNECTICUT AIRPORT AND AVIATION ACCOUNT AND EXEMPT RECORDS UNDER THE FREEDOM OF INFORMATION ACT &

HB 5110, AN ACT APPLYING THE SECURITY EXEMPTION UNDER THE FREEDOM OF INFORMATION ACT TO THE CONNECTICUT AIRPORT AUTHORITY AND CONNECTICUT PORT AUTHORITY.⁸

The Commission supported Senate Bill 869 and House Bill 5110, as they related to the FOI Act and the Connecticut Airport Authority, only.⁹

Both Senate Bill 869 and House Bill 5110 proposed to provide the Executive Director of the Connecticut Airport Authority with the authority to determine whether there are reasonable grounds to believe disclosure of records concerning the Airport Authority may result in a safety risk under the FOI Act. The FOI Commission believed the Executive Director, who necessarily interacts with federal law enforcement agencies regarding security concerns, both foreign and domestic, is the appropriate public official to make such determinations under §1-210(b)(19) of the FOI Act, which statute currently provides a process for reviewing an agency's claims regarding security based exemptions prior to the filing of a complaint, and makes the reviewer the entity that must defend the decision to withhold public records before the Commission, in the event a complaint is filed.

Senate Bill 869 also proposed to add the phrase "or submitted" to the temporal exemption contained in §1-210(b)(24) of the FOI Act concerning records requests for responses to any

⁸ A similar bill was introduced during the 2018 legislative session (SB 177, *An Act Applying the Security Exemption Under the Freedom of Information Act to the Connecticut Airport Authority*), but it never made it out of committee.

⁹ House Bill 5110 also proposed to amend the FOI Act to authorize the Executive Director of the Connecticut Port Authority to determine safety risks related to the disclosure of records concerning the Port Authority. The Port Authority had not reached out to the Commission regarding its security issues and the need to specifically amend the FOI Act to authorize its Executive Director to determine safety risks. Therefore, the Commission did not support the inclusion of the Port Authority in House Bill 5110.

RFPs or bid solicitations.¹⁰ The Commission did not oppose the proposed language as it would include the very limited circumstances where a public agency is itself submitting a proposal in response to a RFP issued by a non-state agency.

Senate Bill 869 made it out of committee with substitute language, and was subsequently amended by the Senate. The bill then passed the House. Senate Bill 869, as passed, amends

only §1-210(b)(24) of the FOI Act, to include the phrase “responses by a public agency to any request for proposals or bid solicitation issued by a private entity.”

House Bill 5110 made it out of committee, but died on the House calendar.

SB 70, AN ACT ESTABLISHING THE CONNECTICUT INFRASTRUCTURE BANK.

The Commission did not oppose Senate Bill 70 which sought to establish the CT Infrastructure Bank (“Bank”) as a quasi-public agency. The Commission did however suggest that in order to ensure transparency the proposed bill should be amended to add language that clearly states that the Bank is a public agency subject to the disclosure provisions in the FOI Act.

Senate Bill 70 made it out of committee without substitute language, but was subsequently amended by the Senate to provide the Executive Director of the Bank with the authority to determine whether there are reasonable grounds to believe that disclosure of records concerning the Bank may result in a safety risk under the FOI Act.

Senate Bill 70 was never taken up by the House. If this bill resurfaces next year, a strong push should be made to ensure that the Infrastructure Bank is subject to the FOI Act.

SB 1015, AN ACT CONCERNING ONLINE LOTTERY DRAW GAMES IN THE STATE & HB 7331, AN ACT CONCERNING SPORTS WAGERING IN THE STATE.¹¹

Senate Bill 1015 required the Connecticut Lottery Corporation to establish a program to offer lottery games through the corporation’s Internet website, online service or mobile application. Among other requirements, the program must establish a “voluntary self-exclusion process to allow a person to exclude himself or herself from establishing an online lottery account or

¹⁰ The proposed language was an outgrowth of a 2016 contested case at the Commission. See Docket #FIC 2016-0035; Ann Rubin and Carmody, Torrance, Sandak and Hennessey, LLP v. Executive Director, State of Connecticut, Connecticut Airport Authority; and State of Connecticut, Connecticut Airport Authority (August 26, 2016).

¹¹ Similar bills were introduced during the 2017 and 2018 legislative sessions, respectively. See Senate Bill 967, *An Act Concerning Online Multijurisdictional Lottery Games* (2017); SB 277, *An Act Concerning Online Lottery Draw Games* (2018); and SB 540, *An Act Authorizing Sports Wagering and Online Lottery Draw Games in the State* (2018).

purchasing a lottery ticket through such program.” Senate Bill 1015 also proposed to exempt from disclosure “[t]he name and any personally identifying information of a person who is participating or has participated in the corporation's voluntary self-exclusion process.” The proposal, however, also allowed the corporation to disclose “the name and any records of such [participant] if such person claims a winning lottery ticket from the use of the online lottery program.” House Bill 7331 contained similar provisions proposing to permit the redaction, with exception, of any personally identifying information of a participant in a sports wagering voluntary self-exclusion process.

The FOI Commission did not object to the redaction of the name and personally identifying information of the individual participating in the voluntary self-exclusion process, with limitation. The proposed language was narrow in its application, and would not completely remove such information from the realm of public records subject to the FOI Act.

The Commission, however, was concerned about another confidentiality provision contained in section 1(h)(6) of House Bill 7331. Such section stated that records that directly or indirectly identify a sports bettor shall be kept confidential and shall not be disclosed. This language conflicted with those provisions permitting the president of the Lottery Corporation to disclose the name and any records of a person who is a participant in the sports wagering voluntary self-exclusion process should that person claim a winning from a sports wager. Sports wagering account holder information of winners should be subject to disclosure, given that such individuals are voluntarily participating in a system of sports wagering offered by a quasi-public agency, among other entities.

Senate Bill 1015 and House Bill 7331 made it out of the Public Safety and Security Committee with substitute language. Both bills were later referred to the Committee on Finance, Revenue and Bonding, where they died.

SB 1051, AN ACT STRENGTHENING HOME CARE SERVICES.

Senate Bill 1051 required the Department of Consumer Protection to establish and maintain a directory of employees of homemaker-companion agencies, and to provide the public with access to certain information (i.e., employee’s full name, identification number, name of any homemaker-companion agency employer and a list of home care trainings completed by the employee).

The Commission did not oppose Senate Bill 1051, but was concerned with language related to safety concerns. Specifically, the bill provided, in relevant part: “Except as otherwise required by law, the commissioner [of Consumer Protection] may withhold from disclosure information in the public record about an employee listed in the directory whenever the commissioner has reasonable cause to believe that release of such information would place the employee in imminent danger.”

The Commission believed that the language regarding safety determinations should track language in §§1-210(b)(18) and 1-210(b)(19) of the FOI Act which sets certain standards for

withholding public records based on safety and security concerns. The Commission also requested that the proposed language be amended to make clear that the Commissioner of Consumer Protection's determination is reviewable by the FOI Commission.

Senate Bill 1051 made it out of committee without substitute language and later died on the Senate calendar.

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We also give a special thank you to the following individuals for their assistance this year: Representative Bob Godfrey, Deputy Speaker Pro-Tempore (110th District); Representative Daniel J. Fox (148th District); Representative Mike France (42nd District); Representative Michael Winkler (56th District); Senator Gary Winfield, Chief Deputy Majority Leader (10th District); and Senator Len Fasano, Senate Republican Leader (34th District).

Bill Tracking:

During the regular legislative session, we monitored 224 bills. A total of 117 received public hearings and FOI Commission staff prepared statements for and/or testified on 19 of those bills. Twenty-eight of the 224 bills monitored became public acts.