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Testimony of Mary Alice Moore Leonhardt, Chair, CBA Administrative Law Section
**House Bill 5738, An Act Concerning Reconsidered Agency
Decisions Under the Uniform Administrative Procedure Act**
Judiciary Committee
March 14, 2006

Senator McDonald, Representative Lawlor and members of the Judiciary Committee, thank you for the opportunity to appear before the committee to comment on House Bill 5738, An Act Concerning Reconsidered Agency Decisions Under the Uniform Administrative Procedure Act.

My name is Mary Alice Moore Leonhardt. I am an attorney in private practice in Hartford, where I practice in the area of administrative law and I primarily concentrate on representation of health care clients and transportation providers. A substantial part of my law practice has been devoted to representing, for almost twenty years, these types of clients before state agencies including the Department of Public Health, Office of Health Care Access, Department of Children and Families, Department of Education, Department of Social Services, Department of Transportation, Department of Motor Vehicles and Department of Consumer Protection, in contested cases and appeals of state agency decisions. I am the chairperson of the Administrative Law Section of the CBA, which consists of attorneys in private practice who represent others before executive agencies, as well as attorneys employed by the State of Connecticut.

The CBA Administrative Law Section **supports** House Bill 5738. On behalf of the Section, I wish to thank the committee for raising the concept in the bill and I respectfully ask that the committee **approve** the bill.

House Bill 5738 would make an agency decision made after reconsideration the final decision in a contested case in lieu of the original final decision for purposes of an appeal to superior court of a state agency decision. The bill is necessary in order to resolve conflicting state superior court decisions concerning whether agency decisions reconsidered under Conn. Gen. Stat. §4-181a(a) replace the earlier agency decision that was reconsidered in all respects for purposes of an appeal (Levine, J.), or whether such reconsidered decisions replace the earlier decision only with respect to issues that actually were reconsidered by the agency (Cohn, J.).

House Bill 5738 would resolve this conflict by having the reconsidered decision be the final decision in the contested case for all purposes, including appeals of issues decided only in the original agency decision for which reconsideration was never sought or granted by the agency.

Resolution of the conflict in this manner will eliminate piecemeal appeals and avoid the need for an appellant to determine which agency decision to appeal for each issue decided. It also will avoid the need to take an appeal while reconsideration is pending before the agency and which may be decided in the appellant's favor such that no appeal ultimately is deemed warranted. Without this clarification, parties are taking multiple appeals to protect themselves from having their appeal dismissed because it is found to have been from the "wrong final decision" under one of the conflicting Superior Court precedents. The bill will not affect the reasonable finality of agency decisions, since only petitions for reconsideration that are timely filed within 15 days of the date of the agency's decision and granted by the agency within 40 days of the date of the decision (five days before an appeal would be necessary) will have the effect of staying the need for an appeal until the reconsidered decision is issued.

The amendment to Conn. Gen. Stat. §4-181a(a)(3) establishes a deadline by which a reconsidered decision must be rendered by the agency. This language was drafted to address concerns raised by Connecticut Legal Services. Although it does not affect the resolution of the conflicting superior court decisions, the CBA Administrative Law Section supports the change in order to build consensus for the bill.

On behalf of the CBA Administrative Law Section, thank you again for the opportunity to comment on the bill before the committee. I would be pleased to answer any questions you might have.