

Testimony of Eric Knapp, Member, Executive Committee,
Planning & Zoning Section of the Connecticut Bar Association
Senate Bill 145, An Act Concerning Municipal Lobbying, and
House Bill 7000, An Act Concerning Municipal Ethics and Municipal Lobbying
Government Administration and Elections Committee
February 5, 2007

Senator Slossberg, Representative Caruso, members of the Government Administration and Elections Committee, thank you for the opportunity to comment on **Senate Bill 145, An Act Concerning Municipal Lobbying, and House Bill 7000, An Act Concerning Municipal Ethics and Municipal Lobbying.**

My name is Eric Knapp. I am a partner in the law firm of Branse, Willis & Knapp and a member of the Executive Committee of the Planning & Zoning Section of the Connecticut Bar Association. I am here today to speak on behalf of the Section to comment on Senate Bill 145 and sections 12 through 27 of House Bill 7000. [Note: because sections 1 through 16 of Senate Bill 145 are identical to sections 12 through 27 of House Bill 7000, all comments and references to Senate Bill 145 are equally applicable to sections 12 through 27 of House Bill 7000.] The CBA supports ethics in government at all levels and commends the legislature for its efforts to address the challenges confronting the state in this area. However, Senate Bill 145 has not been drafted using terms and provisions that conform to municipal land use procedures, rendering those provisions vague, unenforceable and overly broad. Further the Section does not believe Senate Bill 145 would change the behavior of any dishonest persons or affect the integrity of public officials. **On behalf of the CBA Planning & Zoning Section, I respectfully request that the Government Administration and Elections Committee reject Senate Bill 145 and sections 12 through 27 of House Bill 7000.**

Senate Bill 145 would extend the application of the current state code of ethics to municipalities, generally tighten gift restrictions, expand the list of prohibited activities, and extend revolving door laws. Most significantly, for attorneys, engineers, surveyors, architects, planners and their clients, the bill would effectively require those hired to provide professional advice on a local development or land use project to register as lobbyists.

The Section believes that applying state lobbying requirements to municipalities and various boroughs, tax districts and other political subdivisions of the State **should not be enacted** for the following reasons.

- **Vague, undefined terminology.** The bill uses terms that are unclear or undefined, such as “land use matter” and “land use decision” or that have no application at the local level, such as “contested case”. It is therefore unclear whether the land use exemption for attorneys applies to local land use agencies. Not all matters before local land use agencies allow or require a hearing, raising questions about the use of the term “contested case.” It is used to determine administrative procedures to be followed and appeal rights at the state level, not for lobbying requirements before municipalities. The legislation leaves it up to the Office of State Ethics to define the term by regulation. As with any such requirement, it is possible for that the Office of State Ethics will adopt such a definition only after considerable time has passed, may never adopt a definition, or adopt a definition that is too narrowly drawn. For example, relying on the definition of contested case found in the Administrative Procedure Act, Conn. Gen. Stat. § 4-166 et seq., would draw the definition too narrowly because that definition hinges on the existence of a statutory or regulatory right to a hearing and not all matters before local agencies allow for or require a hearing. Significantly, the term contested case is used primarily as a device to determine what administrative procedures need to be followed and what right to an appeal a party may have, not to determine whether a person is subject to lobbying requirements at the state level. If the legislature wishes to impose lobbying requirements it ought to define “contested case” broadly in order to avoid the foregoing problems. While the legislation contains a number of exemptions that are helpful to lawyers, those exemptions are in some cases too limited and in other cases plagued by terms that are not adequately defined. For example, a lawyer engaged in the practice of law before a local body responsible for a land use matter or land use decision (either a Town's legislative body or duly designated agency) is exempt from the lobbying requirements (other than on “legislative” matters). However, any consultant (e.g., engineer, architect, soil scientist, etc.) is not exempt from the lobbying requirements (they would be “communicator lobbyists” under the requirements). In addition, any employee of an applicant or intervenor in a land use proceeding may be subject to the lobbying requirements as communicator lobbyists. Certainly, the applicant or intervenor who hires such communicator lobbyists would likely be deemed a “client lobbyist” and, therefore, subject to the bill’s lobbying requirements.

- **Increased cost to towns and expense to applicants.** A one-size fits-all, wholesale application of lobbying requirements on 169 separate towns, plus various boroughs, tax districts and other political subdivisions of the State would be complicated and burdensome. Attorneys and others not exempt from its requirements and engaged in lobbying as defined in the bill would have to file and register in each town in which they lobby, triggering separate fees and reporting requirements, which would be unwieldy, impractical and unworkable. Further, some municipalities, acting as applicants, may be required to register.
- **Solution without a problem.** No one has demonstrated that a problem exists at the municipal level that would trigger a need for such significant changes to how business is conducted before local land use agencies. If a demonstrated problem exists, it has not been shown that the proposed lobbying requirements would address that problem. Members of the CBA Planning and Zoning Section, who practice in and before municipalities across the state, are unaware of any such problems at the local level that would warrant imposing the onerous, new lobbying requirements. Unlike at the state level, those appearing on behalf of parties in interest must appear at public meetings and identify themselves and the nature of their interest. Current law already prohibits private, off-the-record communications between interested parties and agency members. Imposing such lobbying requirements seems wholly unwarranted since all of the subject land use proceedings would be carried out in the public eye at public meetings or hearings. Decisions in such matters are triggered by formal submissions that identify each party involved and are routinely decided as a matter of public record. Any person seeking to influence the outcome would appear at a public meeting or hearing on the matter. In other words, the current process is an open one in which it is clear both who is seeking to influence the outcome and how they seek to obtain that result.
- **Unintended consequences.** Because all records on lobbying must be separately maintained and are subject to audit at any given time, attorneys may face an irreconcilable conflict to either comply with the audit provisions of the bill or maintain their legal and ethical duties to maintain attorney-client confidentiality and communications. Should an attorney who may be subject to regulation under this bill refuse to allow the Office of State Ethics to audit his or her records on the grounds it would violate an attorney-client privilege, the attorney may be subject to a fine up to \$2,000 or imprisonment of up to one year, or both.
- **Challenges of Enforcement and Administration.** Imposing the bill's lobbying requirements on municipalities will require a dramatic expansion of the Office of State Ethics from an office that is focused on the multiple agencies of state government to one that must oversee an unwieldy system of multiple agencies within 169 different municipalities, plus various boroughs, tax districts, and other political subdivisions of the state. The likely result will be a bureaucratic morass of extraordinary proportions.

For the reasons stated above, the CBA Planning & Zoning Section urges the Government Administration and Elections Committee to **reject** Senate Bill 145 and sections 12 through 27 of House Bill 7000. I would be happy to answer any questions.