STATE OF CONNECTICUT

DEPARTMENT OF TRANSPORTATION

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Office of the
Commissioner

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Public Hearing – March 3, 2008
Planning and Development Committee

Testimony Submitted by Acting Commissioner Emil H. Frankel
Department of Transportation

H.B. 5636 - An Act Concerning Relocation Assistance for Displaced Retail Businesses and Compensation for Outdoor Advertising Structures.

The Department of Transportation (DOT) is opposed to H.B. 5636, AAC Relocation Assistance for Displaced Retail Businesses and Compensation for Outdoor Advertising Structures and offers the following comments.

Section 1(d)(2). While this section relates to real property acquired by redevelopment agencies it will have a peripheral impact on the acquisition of property by the Department of Transportation.

This bill requires the payment of damages to a Displaced Retail Business for "Good Will". In the fall of 2007, a committee chaired by the State's Property Rights of Ombudsman prepared a report on the subject of payment to businesses for the loss of Good Will. The report suggests a more comprehensive approach to the issue and does include the suggestion that all State agencies fall under the same requirements.

Section 2 of the bill seeks to change legislation passed last session regarding the Commissioner of Transportation's responsibility when acquiring an outdoor advertising structure. In the State of Connecticut, outdoor advertising structures are considered to be personal property and therefore can not be the subject of an eminent domain taking by the Commissioner since the Department does not have the authority to acquire personal property.

The courts in Connecticut have considered this issue and have ruled that sign structures are personal property; please see Richard Burkhart v. Commissioner of Transportation and Rocky Mountain LLC, et al v. Commissioner of Transportation. This Act represents an attempt by the sign industry to circumvent the court ruling. The proposed legislation amends the law to require the Commissioner of Transportation to compensate lease holders of outdoor advertising structures for loss of income based on the loss or relocation of a site.

Currently, when the Commissioner requires land rights for a transportation project, a written offer of compensation is made to the property owner. When the proposed acquisition involves the displacement of an existing structure, the rental income received by the land owner from the structure owner, is considered in the appraisal analysis. The value of this income producing aspect of the land is typically determined based on an income capitalization method.

The structure owner, as is any other displacee, is offered relocation assistance in order to effectuate the relocation of his personal property. This assistance is specifically outlined and guided by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

The structure owners have typically been unsuccessful in their efforts to recoup any of the damages from the land owner that they feel entitled to, pursuant to their leasehold interest. This is primarily due to the condemnation clause customarily included in their lease agreement. The clause in effect, absolves the land owner from having to pay their tenant any damages caused by the acquisition of their property by a condemnation authority.

The risk associated in entering into a contract of this nature is a business decision made not only by structures owners, but by all prospective business tenants. This legislation serves to remove this risk from structure owners only, by mandating that the Commissioner compensate them for both the relocation of the billboard and the loss associated with their leasehold interest "fair market value"; as based on the capitalization method. This results in a triplicate payment two of which the billboard owner will receive.

- First, the Commissioner would have already paid the land owner the full amount of value attributable to the income producing nature of the billboard.

- Second, the Commissioner will be obligated to pay that same value to the billboard owner in the form of "fair market value".

- Third, the Commissioner will also be obligated to pay the billboard owner relocation cost associated with moving the structure.

This legislation puts the Department in conflict with Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 and the Federal Highway Administration has promulgated their objection to its language. Its purpose is to remove the outdoor advertising structure owner's risk associated with entering into a lease with a property owner, by making the Commissioner pay for the potential loss of their prospective business tenant, thus underwriting that risk. As consequence, a billboard owner will benefit from preferential protection under the law.

The financial impact to the Department and the State is substantial. The fair market value of an outdoor advertising structure as calculated under the capitalization method would create super payments an example follows:

Assume that a sign structure creates a net income of $10,000/month or $120,000/year for ten years. With a capitalization rate of 8% the resulting payment would be $540,000.00. At $60,000/year the resulting payment would be $270,000.

The Department anticipates impacting at least ten billboards in the next two years. If the Department becomes obligated to make these "super payments", such mass transit projects such as the New Britain – Hartford Busway Project will be severely impacted.

It is further noted that the site value of the existing sign site and the replacement sign site shall be determined by the income capitalization technique, which involves analyzing the income-producing capabilities of the realty, forecasting the periodic income and transforming the income expectation into a present value estimate. The reliability of this method depends on the appraiser's ability to forecast the income stream and apply appraisal techniques. This application may generate a broad range in values depending on the individual appraiser's judgment and access to information.

In addition, there is no language in H.B. 5636 which obligates the sign company to supply the financial information necessary to carry out this highly-speculative valuation method.

The Department respectfully asks the Planning and Development Committee to reject H.B. 5636.

For further information or questions, please contact Pam Sucato, Legislative Program Manager for the Department of Transportation, at (860) 594-3013.