HOME BUILDERS ASSOCIATION OF CONNECTICUT, INC.
3 Regency Drive, Suite 204, Bloomfield, CT 06002
Tel: 860-216-5858 Fax: 860-206-8954 Web: www.hbact.org

Your Home Is Our Business

March 7, 2011

To: Senator Andrew Maynard and Representative Tony Guerrera, Co-Chairmen, Members of the Transportation Committee

From: Bill Ethier, Chief Executive Officer

Re: Senate Bill 824, An Act Requiring Consideration by the State Traffic Commission of Certain Applications Prior to Local Planning and Zoning Approval
Senate Bill 825, An Act Amending State Traffic Commission Certificate of Operation Thresholds

The HBA of Connecticut is a professional trade association with 1,100 member firms statewide, employing tens of thousands of Connecticut citizens. Our members, all small businesses, are residential and commercial builders, land developers, home improvement contractors, trade contractors, suppliers and those businesses and professionals that provide services to our diverse industry. Our members build 70% to 80% of all new homes and apartments in the state each year. We also run the CT Developers Council.

We thank you for raising and urge your strong support of SB 824 and SB 825 to address some serious permitting issues at the State Traffic Commission (STC) that have long plagued many of our members. The DEP, which is often held out as the noose around the neck of economic growth, does not hold a monopoly on state permitting delays. The STC and DOT can also impose significant delays and extra costs on economic and housing development. A companion bill in the Planning & Development Committee, SB 686, approaches the concept in SB 824 in a different way. We urge you to coordinate your efforts in remedying these permitting issues with that committee.

As background, any project, including a single driveway, that abuts or goes onto a state highway, or any work in a state highway, must obtain an **Encroachment Permit** from one of the four DOT district offices. The permit review can involve all aspects of the site, from traffic, drainage, landscaping, etc. The DOT does not process these permit applications until after local approvals are obtained. The DOT Districts, relative to the STC/DOT process below, have been pretty fair in their permits on projects. The DOT District process can take 1-3 months, occasionally longer, but it's a sequential process that comes after local approvals.

However, if a project surpasses a size threshold, set by STC regulations adopted in 1984, of having 200 parking spaces or 100,000 square feet, the STC considers the development a Major Traffic Generator and you must then obtain from the STC a **Certificate of Operation**. For residential subdivisions, you add up the sq. ft. of all the proposed homes to determine if 100,000 sq. ft. is surpassed, i.e., 46 homes of 2,200 sq. ft each, or 34 homes of 3,000 sq. ft. each, and so on.

The 120 day time period in sec. 14-311(c) and sec. 14-311c(c), in which the STC is to make these decisions on applications, is routinely violated. This decision deadline is toothless because all STC has to do is request more information to extend its decision deadline. The

STC requires a very detailed application for traffic, drainage and other impacts, extending far beyond the site itself. The STC relies on the DOT to review the STC Certificate of Operation application, which can involve many units within the DOT. These DOT units review traffic impacts, drainage, public transportation, right-of-way (ROW) issues, rail impacts, and more. The many DOT units involved clog the process, and it can take 3-6 months minimum, sometimes up to or over a year depending on the issues.

As a matter of practice, the STC routinely does not process these applications until local approvals are obtained, so the STC/DOT time frame is also sequential, not concurrent, with local approvals. Under the last sentence of sec. 14-311(c) and 14-311c(c), the STC, at its discretion, does not have to act on or approve the Certificate of Operation application until the local town approves the development. And, the statute, 14-311(b) and 14-311c(b) then requires issuance of the STC certificate prior to issuance of a local building permit, further lengthening the total project approval timeline.

And, if that wasn't enough, if you have an existing STC/DOT permit, any change to the development, such as in a redevelopment project, even if it results in a reduction in traffic, requires you to resubmit to the STC for review and reissuance of a new Certificate of Operation.

SB 824 repeals the sentence that authorizes the STC to not process or approve Certificate of Operation applications until local approvals are in place, but only in sec. 14-311(c), not in 14-311c(c). We urge you to also repeal the sentence in sec. 14-311c(c), and go further and substitute language in both sections that requires the STC to process such applications concurrently with local approvals, using the language of SB 686 in P&D – "to the extent practicable" and, further, require coordination with local approval authorities. Municipal planners are also frustrated by STC's/DOT's sequential treatment of developer's applications. When a project is submitted for local approval to planning and zoning commissions, there is no reason on many projects why the STC cannot begin to review traffic and drainage impacts based on the proposal. If the local commission substantially changes the project with its final approval, the developer can so inform the STC at that time with an amendment to its Certificate of Operation application. So, the STC should develop an amendment and local coordination process, without requiring an applicant to start from scratch.

Equally, if not more, important than concurrent and coordinated processes, SB 825 changes the threshold for residential developments from 100,000 square feet to a set number of homes (i.e., 100 units if it is a residential-only development and not part of a mixed-use project containing office, retail, etc.; or 75 units if the residential development has a club house or other amenity that is open to the public). We have tried to get the STC to change its twenty-seven year old threshold regulations, but to no avail. STC's regulatory thresholds for reviewing "Major Traffic Generators" should be based on trip generations from and into a development. We submit that 100,000 sq. ft. of homes is not equivalent to 100,000 sq. ft. of office space, retail space or many other land uses. And, whether a home is 2,000 sq. ft or 4,000 sq. ft, there is little significant difference in trip generations, yet the size of homes can trigger the 100,000 sq. ft. threshold. We believe the 100 unit/75 unit threshold in SB 825 is a more reasonable threshold for when housing developments need to go to the STC for a Certificate of

Operation **and** a specific number of units provides a necessary dose of certainty to the residential development community.

Beyond requiring concurrent and coordinated processing of STC permits with local approvals (SB 824) and creating a more reasonable and certain threshold for residential developments (SB 825), we also urge you to correct other STC/DOT permitting issues. A number of our members are submitting letters to you outlining the delays and costs they have endured. Some may appear before you at the public hearing. Some have declined to appear out of fear of STC/DOT reprisals. We urge you to listen to their STC/DOT stories and not only pass and amend SB 824 or SB 825 with amendments we suggest above but also to add substitute language addressing the following:

- **Restrict the STC and DOT in terms of what these agencies can review and what they can require of developers** who need either an Encroachment Permit or a Certificate of Operation. The STC reviews a wide array of issues, extending their reviews to issues far offsite. These can be burdensome and inexplicable requirements on real estate developers and need to be corrected. The STC and DOT require of developers traffic improvements that have broader benefit to a wider public than just those using or living in a new development. Therefore, we ask that you add a provision to both sec. 14-311 and 14-311c that the STC "may require analysis of, and improvements to address, solely those matters that are uniquely attributable to the impacts created by and the benefits accruing to the users or residents of the development." Add a similar provision to DOT's encroachment permit authority;
- **Any matters that the STC or DOT is authorized to review, or authorized to require of an applicant, should be written in duly adopted and objective regulations**. Our members have asked STC/DOT staff where they get their authority to do certain things and the response is, "it's just the way it is." Everyone should have written rules to go by;
- **An administrative appeal mechanism should be established** to challenge the requirements imposed on an applicant for either an Encroachment Permit or a Certificate of Operation (see sec. 14-313, which allows an appeal to court from STC's decisions, often not a viable remedy due to the expense and time to go to court);
- **Change the prohibition on issuing a building permit under sec. 14-311(b) and 14-311c(b) to a prohibition on issuing a certificate of occupancy from the local building official**. This will allow building construction to proceed while working through the STC process; and
- **Require concurrent and coordinated reviews of DOT Encroachment Permit applications with local permitting processes**, in addition to requiring concurrent and coordinated reviews of STC Certificate of Operation applications.

Thank you again for raising SB 824 and SB 825 and considering our proposed additions above. We would be happy to work with you on these important bills.