



STATE OF CONNECTICUT  
DEPARTMENT OF TRANSPORTATION  
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Office of the  
Commissioner

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**Public Hearing – April 4, 2011  
Judiciary Committee**

**Testimony Submitted by Acting Commissioner James P. Redeker  
Department of Transportation**

**S.B. 1231 - An Act Concerning Notice of an Action Regarding a Defective Highway, Bridge,  
Sidewalk, Road or Railing.**

The Department of Transportation (Department) is opposed to S.B. 1231 and believes the bill as written would leave the State of Connecticut open to litigation for an indefinite period of time.

CGS 13a-144 and 13a-152 (as applied to the State) are limited exceptions to the State's sovereign immunity. Both sections require claimants to provide written notice to the Department of an injury caused by a defective State highway, bridge or sidewalk, or caused by non-compliance with section 13a-111. Pursuant to 13a-144 and 13a-152, notice must be provided to the Department within 90 days of such injury. The proposed amendment increases the amount of time within which to file notice and makes the trigger for such notice not the injury, but the availability of a completed police investigation report. For several reasons, sections 13a-144 and 13a-152 should not be so amended.

First, the purpose of the notice requirement is to allow the Department to promptly investigate the alleged incident and if a defect exists, to quickly remedy the situation. This has the obvious benefit of preserving evidence (which benefits both the potential plaintiff and the Department) and helping to prevent further injuries by allowing the Department to make necessary repairs or take appropriate steps, as may be necessary. Providing for a longer notice period will lead to evidentiary problems (e.g., even assuming a defect exists, a pavement defect, for example, can significantly change over time. Further, assuming no defect exists, one may arise during the longer notice period confounding the issue), leaving the state vulnerable in litigation and to increased litigation as the Department will not be placed on timely notice and therefore, will not be able to timely repair or investigate. In short, the ability of the Department to effectively defend itself and protect the public will be adversely impacted by increasing the notice period.

Second, an injured party has sufficient time to determine whether to bring a claim to superior court. While the potential plaintiff has to give statutory notice under sections 13a-144 and 13a-152 in order to overcome sovereign immunity, these statutes give potential plaintiffs two years from the date of injury to actually bring a claim to superior court. Accordingly, if, for example, someone is injured on a state road or bridge and it is believed that such injury was caused by a defect in that highway or bridge, notice can be given during the 90-day notice period. If between the time notice is given and the running of the statute of limitations for bringing a civil action a

police report is issued that causes the claimant to decide he or she does not have a cause of action against the Department, no suit need be brought. -- The point is that under the statutes as already written, notice can be timely given and the claimant can then wait for the issuance of a police report (if such report is not issued during the 90-day period) to determine whether he or she, in fact, should pursue a claim against the State. No more time is needed.

Third, the Connecticut Bar Association is well versed in the notice requirement and the Department's web site gives specific instruction concerning defective highway claims.

Fourth, on some minor defective highway matters, no police report is ever issued.

Finally, as the proposed amendment is drafted, the state would be open to litigation for an open-ended period of time.

The Department is unclear on the impetus behind the bill, but if it relates to the issuance of police reports outside of the 90-day notice period, alternatives might exist that could be developed in conjunction with the State Police to provide workable solutions.

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