



STATE OF CONNECTICUT

DEPARTMENT OF TRANSPORTATION

2800 BERLIN TURNPIKE, P.O. BOX 317546
NEWINGTON, CONNECTICUT 06131-7546



Office of the
Commissioner

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Public Hearing – February 23, 2015
Transportation Committee

Testimony Submitted by Commissioner James Redeker
Department of Transportation

Raised H.B 6821 – An Act Concerning Department of Transportation Recommendations Regarding Maximization of Federal Funds, Rights-of-Way, alternative Project Delivery, Commuter Parking, Amtrak Indemnification, Authority to Condemn Property, Maintenance of Bridges, Passenger Seat Belts, Work Zone Safety Funds and Marine Pilot's Licenses.
(Department of Transportation proposal)

The Department of Transportation (CTDOT) would like to thank the Transportation Committee for raising several legislative proposals that represent ongoing efforts to streamline and create efficiencies within CTDOT that ultimately facilitate the implementation and management of the State's multi-modal transportation program.

Section 1: Maximization of Federal Funds. This proposal would enable the Department to maximize the use of federal funding for roadway and bridge repair projects. Working with the Department of Administrative Services (DAS), CTDOT is proposing an exception to current language for contracts utilizing federal funds, to enable the Department to access Federal Highway Administration (FHWA) funding for roadway and bridge repairs.

Currently, the Department utilizes 100% state funds to pay for roadway and bridge maintenance. DAS is responsible for awarding and administering all contracts for CTDOT for roadway and bridge maintenance. DAS utilizes its general procurement authority and bidding/proposal processes (CGS 4a-57) to enter into such contracts. CTDOT then writes purchase orders off of the master DAS contract(s).

The Department has wanted to use federal funds over the years to supplement the state funds for this work, but has been unable to do so because specific language in DAS statute has been viewed by the federal government to be contrary to federal regulations. In short, FHWA has interpreted the following language in CGS 4a-57 to be a deviation from the federal requirement that all FHWA contracts utilizing federal funds be awarded to the lowest responsible qualified bidder:

"If any such bidder refuses to accept, within ten days, a contract awarded to such [lowest responsible qualified] bidder, such contract may be awarded to the next lowest responsible qualified bidder or the next highest scoring bidder in a multiple criteria bid, whichever is applicable, and so on until such contract is awarded and accepted. If any such proposer refuses to accept, within ten days, a contract awarded to such proposer, such contract shall be awarded to the next most advantageous proposer, and so on until the contract is awarded and accepted."

This proposal would provide an exception to this language in CGS 4a-57 for contracts utilizing federal funds, to enable CTDOT to access FHWA funding for roadway and bridge repairs. This change will allow the Department to utilize federal funds in order to complete a significantly larger amount of highway and bridge repair projects each season.

Sections 2-3: Rights-of-Way Revisions. Currently, CGS 13a-73(b) allows the last owner of record to remain in residency of their home, rent free, for a period of 120 days, when the property is acquired by the commissioner through condemnation only. This proposal seeks to reduce the rent free grace period from 120 days to 90 days; but extend the benefit to owner-occupants whose residential property is acquired under the Commissioner's purchase authority (13a-73(c)), as well as owner-occupied businesses, regardless of the acquiring authority of the Commissioner.

The period reduction of 120 days to 90 days corresponds with today's standard to secure payment for real property acquired by condemnation, and in instances where financing may be required, to secure a replacement property. This proposal will correct these inadvertent omissions, while providing for the consistent application of the temporary use of real property, as defined, acquired by the commissioner. The removal of..."for use as a highway maintenance storage area or garage", from 13b-73(c), will allow the commissioner additional flexibility in the settlement of claims, with the advice and consent of the Attorney General.

In addition, the Department transfers excess state property under CGS 13a-80. Language under this section was revised by Section 1 of Public Act 13-277 in order to process the disposition of state land in an efficient manner, but what passed was different from the Department's original language – and has created redundancy with the notification to municipalities as required by CGS 3-14b

The 2013 public act was revised to allow for consideration of all existing requirements for the disposition of excess state property; including appraisals, right of first refusal to former owners, legal lots of record, and public bids, while providing more clarity and flexibility to the state's requirements. The costs for appraisal and advertising for bids were reduced and the process should have become more streamlined for faster processing time. However, the 2013 act erroneously included language to offer the municipality legal lots of record prior to a public bid. This language has created redundant work and is not necessary as CGS 3-14b requires that municipalities be offered the right of first refusal on all properties, subject to conditions of sale acceptable to the state.

The public bid process is critical in establishing a key condition of sale - sales price. If the Department were to offer property to the municipality prior to a public bid and it was refused, the Department would be required to offer it again under 3-14b (e) after the terms of the sale have been determined. After each offer the municipality is allowed 45 days for consideration. This only serves to delay the process.

The proposed change to 13a-80 in H.B. 6821 would allow CTDOT to obtain an appraisal, hold a public bid, establish terms acceptable to the state, and then offer the municipality right of first refusal under 3-14b.

Sections 4-5: Alternative Project Delivery Revisions. This proposal seeks to revise existing statutes allowing the Department to use alternative contracting methods to specifically allow CTDOT to use State employees for project design, allow Construction Manager-At-Risk general contractors to perform some of the construction work if it is found to be more cost-effective than subcontracting, and clarify that the Department may consider factors such as quality of work and speed of construction in addition to price when evaluating subcontractor proposals.

It also allows the Department to advertise the project using electronic media and trade journals, in addition to local newspapers to reach the limited audience of construction manager general contractors, many of whom may not be headquartered in the immediate area of a potential project. The alternative termination date for the transition period allowing use of consultants is removed to allow continued use of consultants until the Governor certifies that the use of consultants is no longer necessary.

The Construction Manager/General Contractor method allows the Department to engage a construction manager during the design process to provide input on the design. During the design phase, the construction manager who is also a general contractor capable of actually constructing the project, can provide "inside" advice including, but not limited to, scheduling, pricing, and phasing to assist the department to design a more constructible project which represents a better long-term value to the taxpayers than traditional contracting methods. During the construction phase, the Construction Manager/General Contractor can leverage existing relationships with subcontractors to select those who are most capable of completing high quality work on time and at competitive prices, enabling the Department to construct infrastructure which will last longer, cost less over its life cycle, and reduce the inconvenience to the public during the construction process.

FHWA is encouraging states to adopt alternative project delivery methods as part of its "Every Day Counts" Innovation initiative. The goal is to reduce and reallocate project risk, provide opportunities for innovation, improve cost control, improve design quality, optimize scheduling, and accelerate project delivery. The FHWA has recently provided training in alternative project delivery to CTDOT staff, and maintains a resource library to assist state DOTs implementing alternative contracting methods.

Please note: the Department has attached substitute language for Section 4. Language necessary to specifically address the issue of Construction Manager/General Contractor methods was not included in Section 4 of the bill as drafted; and a drafting error by the Department eliminated existing newspaper notification in lines 204 and 205, which we wish to reinstate.

Sections 6-9: Commissioner's Authority to Enforce Parking at Rail Stations. This proposal seeks to amend current transportation statutes to define "parking inspector" and authorize a parking inspector to issue citations for parking violations. This change will provide the Commissioner the authority needed to effectively implement open commuter rail parking systems that will be utilized on the CTRail Hartford line. Without these changes, the Department is unable to control the use of parking spaces within these parking areas.

Section 10: Amtrak Indemnification. This proposal will expand the Department's ability to indemnify and hold harmless Amtrak for the successful implementation of the Hartford Line Service and the improved service on Shore Line East (SLE).

CTDOT cannot indemnify and hold harmless any entity without legislative authority. The Department has this authority in CGS 13b-34(i), which allows for the indemnification of Amtrak (a/k/a National Railroad Passenger Corporation). With development of passenger service from New Haven to Springfield, MA (Hartford Line) and SLE service improvements, additional indemnification and hold harmless authority is needed. The right-of-way for SLE and for Hartford Line is owned by Amtrak. Amtrak will not allow anyone or any entity on their right-of-way absent an executed agreement that such person or entity will indemnify and hold Amtrak harmless.

Metro North, by virtue of the fact that M-8s will be operated in SLE service, will be required by Amtrak to enter into such an agreement. SLE service is exclusively provided by Amtrak, and but for Connecticut's efforts to expand and improve services on this line, Metro North would not be on this part of Amtrak's right-of-way and receives no benefits from such operation. Consequently, Metro North will not enter into any such agreement with Amtrak unless the Department will indemnify and hold them harmless.

For Hartford Line Service, the Department will be competitively procuring an operator pursuant to section 13b-79u. Amtrak will require any new operator to also enter into an agreement indemnifying and holding Amtrak harmless. From a practical point of view, it is likely that no service provider will submit a proposal if they will be responsible for such indemnification. Even if service providers would propose, it may be in the best interest of the state, for the Department to be able to provide for this indemnification in order to reduce the cost of procuring such service.

Accordingly, the proposal expands the Department's ability to indemnify and hold harmless under the circumstances noted and such legislation is considered essential for the implementation of the Hartford Line Service and the improved service on SLE. Absent such waivers of sovereign immunity, the Department and plans for both services cannot move forward.

Sections 11-12: Bus Certificates. This proposal clarifies that under CGS 13b-36, the DOT Commissioner can take by eminent domain, intangible property and that if the commissioner does so, certificates of public convenience and necessity issued under section 13b-80 of the statutes are extinguished.

Improvements and innovations to the State's public transportation system are long overdue and have been held up in court due to disputes regarding whether holders of certificates of public convenience and necessity have a property interest in such certificates, the extent of routes covered by such certificates, and whether such certificates can be taken by eminent domain authority set forth in CGS 13b-36.

The proposed amendments clarify that such authority does exist and that the exercise of such authority extinguishes certificates issued under section 13b-80 of the statutes.

Once enacted, the Department will be able to implement the General Assembly's mandate for the commissioner to improve, innovate and achieve a more efficient public transportation system. This system will also provide constituents with more scheduling and destination options and reduces the subsidy taxpayers currently make to individual bus companies.

Section 13: Authorizing Maintenance Agreements for Orphan and Adopted Bridges. This proposal allows the Department to enter into agreements with municipalities for the maintenance and removal of snow and ice from a footpath or sidewalk on orphan and/or adopted bridges. An "orphan bridge" is any bridge which spans a railroad right-of-way not owned by the State that carries a municipal road. An "adopted bridge" is a bridge which spans any rail right-of-way which has been purchased or adopted by any state agency.

The Department's Office of Highway Operations would now be able to enter into an agreement with a town detailing the responsibility for the partial or complete maintenance of the structure. CTDOT is not seeking to return the maintenance obligation of all these structures over to the towns, but rather to look at them on a case by case basis as these structures are rehabilitated, rebuilt or, as in the case of the Church Street bridge in New Haven, a new structure is built at the request of a town.

Section 14: Safety Belts in the Back Seat. This proposal requires all occupants in a motor vehicle to wear a safety belt. Current statute only requires the driver and front seat passengers to be restrained.

As reported by the National Highway Transportation Safety Administration (NHTSA) Report Number DOT HS 808 945:

- In all crashes, back seat lap/shoulder belts are 44% effective in reducing fatalities when compared to unrestrained back seat occupants.
- In all crashes, back seat lap/shoulder belts are 15% effective in reducing fatalities when compared to back seat lap belts.
- Lap/shoulder belts are 29% effective in reducing fatalities when compared to unrestrained occupants in frontal crashes.

Back seat outboard belts are highly effective in reducing fatalities when compared to unrestrained occupants in passenger vans and SUVs. Lap belts are 63% effective and lap/shoulder belts are 73% effective. Belts are so effective in these vehicles because they eliminate the risk of ejection, a Motorist riding unrestrained in the back seat of a vehicle become a projectile inside the passenger compartment of a motor vehicle when the vehicle becomes involved in a crash. A full grown adult being projected at the front seat passenger area and its'

occupants at the speed of the vehicle traveling creates unnecessary risk for severe injury not only to the unbelted passenger but to any and all occupants within the vehicle. Additionally the unbelted occupant stands an increased chance of being ejected from the vehicle where they can come in contact with fixed objects' outside the vehicle or even have the vehicle roll over and crush them. Safety belts save lives not only for front seat passengers but for back seat passengers too.

Section 15: Use of Work Zone Safety Account. This proposal broadens the types of expenditures that may be used from the work zone safety account established under CGS 14-212 to include the purchase of technology and equipment and work zone training and education. Currently, CGS 14-212g (a) limits the type of expenditures to primarily enforcement activity. Allowing for other types of expenditures will aid in the protection of workers in highway work zones as defined in Section 14-212d.

Sections 16: Marine Pilot License Route Extension. This proposal will provide the DOT Commissioner with needed flexibility to issue an "extension of route" for the Connecticut and Memorandum of Agreement (MOA) waters to experienced state licensed marine pilots without diminishing safety of navigation and protection of the marine environment.

Currently, under in CGS 15-13, a person qualified to apply for a Connecticut state marine pilot license is required to make 12 round-trips as a pilot of record or 24 round-trips as a pilot observer or a combination thereof on vessels greater than 4,000 GT within the preceding 36 months over the branch of the state waters for which a license is sought.

Vessel traffic of the qualifying size is significantly lower than when the trip requirements were drafted and codified. Adding a new paragraph (b) to CGS 15-13 will provide the DOT Commissioner with needed flexibility for route extensions. The proposal is also consistent with extension of routes granted by the Board of Commissioners of Pilots of the State of New York, the other licensing authority that is signatory to the MOA, and will not tear the fabric of marine safety or protection of the marine environment.

Due to decreasing commercial vessel traffic, it will be increasingly difficult to license new younger Connecticut state marine pilots for all branches of the state and MOA waters at a time when the current licensed pilots' average age is increasing without this proposal.

This proposal was initiated by the Connecticut State Pilots and vetted by the Connecticut Pilot Commission.

For further information or questions, please contact Pam Sucato (pamela.sucato@ct.gov) or CJ Strand (carl.strand@ct.gov) at the Department of Transportation, (860) 594-3013.

SUBSTITUTE LANGUAGE - Section 4 of Raised Bill No. 6821, LCO No. 3960

Sec. 4. Section 13a-95b of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2015):

(a) The Commissioner of Transportation may, as an alternative to using a design-bid-build contract, designate specific projects to be completed using a (1) construction-manager-at-risk contract with a guaranteed maximum price, or (2) design-build contract.

(b) If the commissioner designates a project to use a construction-manager-at-risk contract with a guaranteed maximum price, the commissioner may have the project designed by department personnel or enter into a [single] contract with an architect or engineer for the project design, [as well as a single] and may also enter into a contract with a construction-manager-at-risk contractor who will provide input during the design process and may be responsible for the construction of the project. [by selecting trade subcontractors using a low sealed bid process.] The commissioner may permit the contractor to self-perform a portion of the construction work if the commissioner determines that the construction manager general contractor can perform the work more cost-effectively than a subcontractor. All work not performed by the construction manager general contractor shall be performed by trade subcontractors selected by a process approved by the commissioner. The construction-manager-at-risk contract shall have an established guaranteed maximum price. In the event that a guaranteed maximum price cannot be agreed upon, the commissioner may elect to call for bids on the project as provided for pursuant to section 13a-95. The commissioner may select the architect, engineer or contractor from among the contractors selected and recommended by a selection panel. Any such contract for such project shall be based upon competitive proposals received by the commissioner, who shall give notice of the project, by advertising at least once, in a newspaper having a substantial circulation in the area in which the project is located, and, at the commissioner's discretion, on the Department of Administrative Services State Contracting Portal, and may use other advertising methods likely to reach qualified construction manager contractors. Award of any such contract shall be based upon the general conditions and staff costs plus qualitative criteria. The commissioner shall establish all criteria, requirements and conditions of such proposals and award and shall have sole responsibility for all other aspects of the project. Any contract shall clearly state the responsibilities of the contractor to deliver a completed and acceptable project on a date certain, the maximum cost of the project, and, if applicable, as a separate item, the cost of property acquisition.

(c) If the commissioner designates a project to use a design-build contract, the commissioner may enter into a single contract with the design-builder, who the commissioner may select from among the design-builders selected and recommended by a selection panel. The contract shall (1) include, but not be limited to, such project elements as site acquisition, permitting, engineering design and construction, and (2) be based on competitive proposals received by the commissioner, who shall give notice of the project and specifications for the project, by advertising, at least once, in a newspaper having a substantial circulation in the area in which the project is located, and, at the commissioner's discretion, on the Department of Administrative Services State Contracting Portal, and may use other advertising methods likely to reach qualified design-build contractors. Award of the design-build contract shall be based on a predetermined metric provided to proposers in advance of technical proposal development. This metric may be unique to each project, but shall consist of a combined score of qualifications and past performance of the proposer, technical merit of the proposal and cost. The commissioner shall establish a selection panel for each project to score the qualifications and past performance and technical portion of the proposal using the predefined scoring metric. The sealed cost portion of the proposal shall be opened in a public ceremony only after the qualifications and past performance and technical portions of the proposals have been scored. The commissioner shall determine all criteria, requirements and conditions for such proposals and award and shall have sole responsibility for all other aspects of the contract. Such contract shall state clearly the responsibilities of the design-builder to deliver a completed and acceptable project on a date certain, the maximum cost of the project, and, if applicable, as a separate item, the cost of property acquisition.