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Transportation Committee, February 23, 2015

RE: HB 6821 An Act Concerning the 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 Safety Funds and Marine Pilot's Licenses

HB 5640 An Act Concerning the Taking of Facilities by the Commissioner of Transportation

Senator Maynard, Representative Guerrera and distinguished members of the Transportation Committee, my name is Jean Cronin and I am the Executive Director of the Connecticut Bus Association, which is a statewide trade association representing Connecticut's charter bus companies. I am here today to oppose sections 11 and 12 in HB 6821 An Act Concerning the 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 Safety Funds and Marine Pilot's Licenses.

Section 11 of this bill would allow the commissioner of the Department of Transportation to purchase or take intangible personal property, including licenses and certificates, similar to an eminent domain action on land or tangible property. There would be no appeal and no due process.

Section 12 of this bill specifies that the commissioner of the Department of Transportation can purchase or take the certificate of public need and necessity of a motor bus company, which was a required document for motor buses operating in the State of Connecticut. Motor bus companies were required to pay for these certificates and were not allowed to sell or transfer these certificates to another party without the express approval of the Department of Transportation.

In August 1980, the Department of Transportation issued a three-part report discussing the history and current status of the transportation system in Connecticut. The report traces the history of regulation of mass transportation in Connecticut back to 1853. Included in the report was a section on the history and regulation of bus transit in Connecticut. In 1921, the Public Utilities Commission (PUC –the predecessor of the Department of Public Utility Control (now known as PURA)) was expanded to include the regulation of motor buses.

Although the current statute requiring motor bus companies to obtain a certificate of public convenience and necessity dates back to 1949, many of the current certificates issued under an earlier statute date back as far as the 1920s. Bus operators had to obtain a certificate of public convenience and necessity to operate a route and had to pay for the right to operate each route.

Bus routes, fares, speeds, schedules, continuity of services and the convenience and safety of passenger and the public had to be approved by the Public Utilities Commission, with input by the various municipalities through which the route operated. The motor bus industry was heavily regulated to protect the public interest and prevent price gouging and manipulation of a needed public service.

There were no public transit operations in those days. The routes were fun by family companies that are still operating today, including Post Road Stages, DATTCO, New Britain Transportation and Kelley Transportation. These companies obtained certificates of public convenience and necessity and

purchased rights to operate various routes throughout central Connecticut. In fact, these companies still operate these routes today as commuter runs for DOT.
Back in the 1970s, the Connecticut Company sold its various routes to the State of Connecticut, which began operating its own network, known today as Connecticut Transit.

In 1979, the regulation of the motor bus industry was transferred from the Public Utilities Commission to the Department of Transportation, where it remains today. These regularly operated routes, also known as commuter runs, are part of the vast public transportation network in Connecticut.

The system set up by the State of Connecticut established Certificates of Public Convenience and Necessity and the companies that I previously mentioned have established routes for which they have exclusive rights. The Connecticut Supreme Court in *Gray Line Bus Company v. Greater Bridgeport Transit District, 188 Conn. 417, 423 (1982)* held that "a profitable franchise has been recognized as a property right entitled to constitutional protection." Once a property right has been established it cannot be legislated away.

In 2010, the administration of Governor Jodi Rell decided to competitively bid all the bus routes in the state. What they discovered is that several of these routes had certificates owned by the private companies who had operated them for decades and that they could not be bid out. Because this action threatened not only their ownership rights but their ability to operate their routes, the four previously named motor bus companies brought a lawsuit against DOT in 2010 and the Superior Court issued a temporary restraining order against the DOT.

After a series of hearings, the Court issued a ruling in 2012 that continued the temporary restraining order as a temporary injunction that remains in place to this day. The Court agreed that the companies' certificates amounted to constitutionally protected properties on a route for which each company has exclusive rights to operated.

Since this time, I have been told that the DOT commissioner has issued notices of condemnation of each company's certificates in March, 2014 and assigned a value of one dollar each for their purchase. The court decision is being appealed and is pending as of this moment. A lawyer representing these four companies will also be providing the committee with testimony today in much greater detail, describing the events of this lawsuit.

The question to be raised today is whether the state has the right to take away the route ownership from companies that legally purchased these routes under the state's own laws, without adequate discourse or compensation. We have seen what happens when the state uses its eminent domain powers to take people's physical properties, but what precedent are we setting by allowing the state to take away someone's lawfully purchased service ownership rights? The whole purpose of certificates of need and necessity will be undermined by sections 11 and 12 of this bill.

The legislature does not usually intervene in cases that are pending before the court to pass legislation that will impact one party over another. The Connecticut Bus Association urges the Transportation Committee to let this case be resolved by the court system and strike sections 11 and 12 from this bill.

I would also like to add my full support to HB 5640 An Act Concerning the Taking of Facilities by the Commissioner of Transportation, which would protect these four companies from the actions of DOT

Thank you for your consideration.