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Testimony of Eric Hammerling, Executive Director, Connecticut Forest & Park Association

Public Hearing Subject Matter	**Support/ Oppose**
RAISED BILL 5602: AN ACT CONCERNING A PROPERTY OWNER'S LIABILITY FOR REMOVING A FALLEN TREE OR LIMB.	Oppose

The Connecticut Forest & Park Association (CFPA) is the first conservation organization established in Connecticut in 1895. For 120 years, CFPA has offered testimony before the General Assembly on sustainable forestry, state parks and forests, trail recreation, natural resource protection, and land conservation issues.

I am testifying today in opposition to Raised Bill 5602, though I do want to acknowledge that this bill is an improvement to the bill that was vetoed by Governor Malloy last year. I thank Rep. Camillo in particular for his efforts to improve this bill.

The bill has improved in the following essential ways:

- A professional, licensed arborist would make the judgment on the health of a particular tree or limb; and
- Non-profit organizations like Land Trusts, who are protecting land for their natural resource values (and that typically includes the trees on the property), would be insulated from some unintended consequences of being swept up in this law. It is important that this law not discourage land trusts from protecting property because of potential liability concerns.

The bill still falls short of a bill CFPA could support in several significant ways:

- The bill uses loose language to define the trees that are the target of this bill. For example, the reference to "diseased" in "diseased or likely to fall" should be removed because many trees have diseases or disease flare-ups that are not fatal to the tree. "Diseased" should be replaced with "hazardous," (recently defined in §16-234) and it should probably be "likely to fall on the neighboring property." So, the improved language in Section 1(a) of the bill would read as follows:

  > (2) the adjoining private property owner provided written notice by certified mail to the owner of the real property from which such tree or limb fell that the tree or limb was [~~diseased~~] hazardous or likely to fall on the neighboring property and requested that such tree or limb be removed or pruned.

- If the problem that this bill is trying to solve is squabbles between private landowners on boundary trees, other unintended landowners who are not the target of the bill should be exempted from the legislation. For example, water companies, utilities, farms/working forests, and municipal, state, regional, or federal governmental agencies.
- There should be an exemption in the case of trees or limbs that fall as the result of a storm or other "acts of god, and not due to the tree condition that was the subject of the notice." In the worst storms, trees and

limbs could fall from non-adjacent properties and it would be difficult to determine with whom the duty to remove would rest.

- In consideration of constitutional protections of due process and basic fairness, not only should the adjacent property owner get a written licensed arborist's opinion, but also the tree owner should have the right to rebut the original arborist's finding by consulting an arborist to get an authoritative written determination of the condition of the tree or limb in question. If the arborists disagree, there should be no presumption that the tree or limb must be removed.
- There is no time limit on the tree owner's obligation once notice by certified mail is given. This is important because EVERY TREE will eventually fall at some point in the future. So, the notice could literally cover any tree that might come down for any natural or unnatural reason at any point in the future. Unless the notice is on the land records, subsequent landowners would likely have no knowledge of it. Perhaps the notice should be limited to 5 years or until there is a new landowner (whichever is shortest)?
- Many landowners do not have the means to pay for the removal of a tree and/or limb. A Fund should be created to help residential property owners with removals of hazardous or likely to fall trees if they meet criteria for being "unable to pay."

Common law on tree/branch boundary disputes has worked generally well (with some exceptions, of course) for over 500 years because of the wide variety of factors in play. What is the pressing need at this time for devising a statute that does not address all the potential issues, and is more inflexible than evolutions in common law over time?

Thank you for the opportunity to testify on this bill. I would be glad to respond to any questions you may have.