



STATE OF CONNECTICUT  
DEPARTMENT OF TRANSPORTATION  
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Office of the  
Commissioner

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**Public hearing – February 27, 2015  
Planning and Development Committee**

**Testimony Submitted by Commissioner James Redeker  
Department of Transportation**

**S.B. 881 – An Act Concerning the Taking of Intangible Personal Property by the Commissioner of  
Transportation.**

The Department of Transportation (CTDOT) opposes S.B. 881. The reason for this opposition is the Department's desire to implement an improved, more efficient, and cost effective public transit system.

Historically, the State's public bus transit system was operated by multiple private bus companies pursuant to certificates of public convenience and necessity ("Certificates"). The legislative requirement for a bus company to get such a certificate prior to operating along a route was to ensure that one bus company could not engage in destructive competition. Prior to the 1970s, bus companies provided service along the routes specified in their Certificates using their own funds and buses.

By the 1970s, however, bus companies began to sustain financial losses and CTDOT started contracting with bus companies and has provided increasing public subsidies as a matter of public policy ever since to ensure essential public transportation for the State's citizens. In addition to fully subsidizing operating losses, the Department owns all of the buses used in delivering statewide public transit services, including services provided by Dattco, Inc., New Britain Transportation Company, Nason Partners, LLC (dba Kelley Transit Company, LLC, and Collins Bus Company.

The statewide public bus system is provided through 26 different contracts with operators of private bus companies. This framework does not maximize the quantity, quality, efficiency, service integration or customer service of the statewide network. The opportunity to modernize and improve the overall transit system and to act on the legislative mandates set forth in sections 13b-4, 13b-32, 13b-34 and 13b-36 of the statutes, led the Department to initiate a state-wide program to improve bus transit services. As a first step toward implementing this program, on September 27, 2010, at the direction of the former Rell administration, the Department posted a Request for Proposals (RFP) for bus operator service for identified bus routes. It is important to note that this RFP sought proposals from private companies. Proposals were submitted, evaluated for best overall value and price, and awards were imminent when five bus companies sought and obtained a temporary injunction that prevented and is still preventing the Department from going forward.

It is worth noting that Dattco, New Britain Transit, Nason and Collins submitted proposals in response to this RFP that would have "taken" the routes of other bus companies, based on their proposals for operating the routes more efficiently and effectively. Ironically, had an injunction not been issued,

based on the final company proposals, Dattco would be operating routes formerly operated by Collins and Nason, and New Britain Transportation would be operating routes formerly operated by Dattco. As with any competitive selection, there are winners and losers, but among the winners are the taxpayers of Connecticut.

Also important to note is that during the various briefings in that injunction case, the plaintiff-bus companies conceded: "The State is, of course, able to condemn those routes for which the Plaintiffs expect that they will be compensated the fair market value of their certificates." (Docket Sheet No. 154.00, Memorandum at p. 9; emphasis added). We agreed and, accordingly, acted under the authority that the General Assembly granted to the Commissioner of the Department of Transportation to take property and took the Certificates of these bus companies. However, these bus companies filed a second lawsuit to challenge our authority to do so and the court did not rule in their favor.

These bus companies have argued that S.B. 881 is necessary to protect their constitutional rights. This is a spurious argument. The State has the power to condemn property, including both real and intangible property. The only constraints on that power under the Fifth Amendment to the United States Constitution are that the taking be for a "public purpose" and that "just compensation" be paid. Our taking of the Certificates is for a public purpose as detailed above, and the bus companies are given due process to argue in court what compensation should be paid to them for this taking. The Certificates have been taken and are now owned by the State, so there is nothing to revoke or suspend.

The bus companies speculate that our taking of the Certificates is all about *CTfastrak* and depriving them of alleged rights to exclusively operate the *CTfastrak* system. This argument is flawed. First, we are where we are because of a 2010-issued RFP to improve statewide service; not because of *CTfastrak*. Second, the *CTfastrak* guideway never existed before, as it was historically a rail corridor operated by rail companies. The entire right-of-way is now owned completely by CTDOT and has been utilized to build the bus rapid transit corridor. The bus companies' assertions that they have exclusive rights on *CTfastrak* are incredible.

We also want to clarify the Department's efforts to provide the most favorable service to the public on *CTfastrak* until the judicial matters have been finally adjudicated. The Department has been developing the service plan for the March 28, 2015 opening of *CTfastrak* for several years. With the goal of providing expanded service connections and hours of service to all customers in the region, the Department offered Dattco and New Britain Transportation sole-source contract expansions valued at \$2.4 million in additional subsidies and buses which would have delivered added service for customers. The Department's offer was a 47% increase over the combined current contract values that would have added additional buses to their fleet and provided 25-35 new private sector jobs for the companies. The proposal specifically noted that nothing in the proposal was intended to interfere with the actions currently pending in court and recognized that each party would reserve all arguments and defenses and without creating any exclusive rights relative to *CTfastrak* route expansions. Dattco and New Britain Transportation rejected this proposal.

Attached is a copy of the Department's testimony submitted earlier this week in support of Sections 11 and 12 of H.B. 6821, which makes explicit the right that already exists in section 13b-36 of the statutes for the Department and the Commissioner to take Certificates.

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

**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.**

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.

*- Excerpt -*

**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.**