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Testimony of Stephen O. Allaire
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in OPPOSITION to
Senate Bill 16, "An Act Increasing Efficiency in the Regulation Process"

General Administration and Elections Committee
February 25, 2016

My name is Stephen O. Allaire and I am an attorney member of the Elder Law Section of the Connecticut Bar Association. This testimony is submitted in opposition to the Governors Bill, S.B. 16, "an Act Increasing Agency Efficiency in the Regulation Process". The Elder Law Section believes that this bill not only undercuts transparency in government, but eviscerates the role of the Legislative branch in issuing implementing regulations for all state agencies. Programs institutionalized by the legislature that our elderly or special needs residents need could be effectively eliminated by the Executive branch acting alone.

Section 1(c) (2) of S.B. 16 would amend CGS 4-168 (c) (2) to permit agency heads to "opt out" of passing regulations, even if the statute requires the agency to adopt regulations. The agency head can, without any review, and acting without any constraint, determine that "the statutory provisions requiring the adoption of such regulations to be sufficient to enforce the statutory provisions". The legislative branch would essentially be writing itself out of the ability to ensure their adopted statutes intent is carried out by appropriate regulations. This provision would apply not only to the current elected members of the legislative branch, but all future members who would not have the ability to carry out their role in the government process.

Section 2 of the bill expands CGS 4-168 (h) permitting "technical amendments", including outright repeal of regulations, without prior notice or a hearing, or a comment period. The old saying that one person's trash is another person's treasure has some application here. There can be strong differences of opinion whether a specific change in a regulation has been "directed by a public act". This could result in a substantive change that is not mandated by a statute, and if there is no opportunity or comment, there will be no input. In particular matters, or over time, this may erode the statutory purpose, and public trust, in the process and outcome.

Section 3 severely erodes the role of the Regulations Review Committee over emergency regulations set forth in CGS section 4-168 (g). The law currently provides for a ten day advance notice to the committee before the regulation would go into effect, and the committee then has ten days, a very short time, to reject it, or it is deemed to have been approved. The proposed change has



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no limitation on the agency from immediately implementing the emergency regulation while the legislative review is pending. This deprives the committee of the ability to review and possibly reject, before “facts are created on the ground”.

The most pernicious portion of Section 3 is the repeal of CGS Section 4-168(g) (3) which states that if the steps to adopt a permanent regulation are not completed by the expiration of the emergency regulation, which emergency regulations are effective for 120 days and can be extended to 180 days, then the emergency regulation would cease to be effective. If this provision is removed, an agency wishing to circumvent public input, or even input from the Regulations Review Committee, could have emergency regulations stay operative for years, in effect making them permanent regulations. This is analogous to one of the famous quotes in *Roe V. Wade*, in which standing was found, because otherwise it was a law affecting people that was “capable of repetition, yet evading review”. And since Section 3 would remove any opportunity for public comment, before, during or after the promulgation, this would give all power to the executive branch to implement never ending (permanent) regulations, without public or Regulation Review Committee input.

An example of the usefulness of a review process is the proposed regulations relating to Medicaid long term care after the Deficit Reduction Act submitted by DSS. I served on a committee of elder law attorneys that opposed the proposed regulations, along with many other interested organizations, pointing out that some of the regulations would be a violation of federal law, and other portions would have unintended consequences.

Section 5 of the proposed regulation completes the evisceration of any legislative oversight of the statutes and programs the legislature enacts, by eliminating the requirement that the Regulation Review Committee co-chairpersons report annually on all statutes requiring the issuance of regulations that have not been complied with by filing of the proposed regulations with the committee. It is the method by which agencies are held accountable. Combined with Section 1, agencies could secretly avoid compliance.

In summary, S.B.16 will severely limit the legislative branch in its function to set the rules, and will drastically reduce transparency to the legislature and the public. This is not in the public’s interest. For this reason I request that you reject this bill.