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Senator Osten, Representative Miller and Members of the Planning and Development Committee:

Thank you for this opportunity to present input on **House Bill No.5183, an Act concerning Attorney Fee Agreements in Municipal Tax Appeals**. I am very sorry that due to a scheduling conflict I was unable to attend the public hearing held on February 19, 2016. Last year I appeared at the public hearing on a similar bill, House Bill No.6945, which was ultimately given a Joint Favorable recommendation by this Committee, and was passed by the House of Representatives, but ran out of time in the Senate

I have been a member of the bar of this state for forty-four years. From 1980 to 1995, I was chief counsel and deputy director of Connecticut Legal Services, the statewide legal aid program. I later served as judge of probate for the District of Windham from January of 1999 until I retired in January of 2011.

For the last four years of my judgeship, I served as first administrative judge of the Northeast Regional Children's Probate Court at Willimantic and Brooklyn. Since 1996, I also served at various times as town attorney for five Eastern Connecticut municipalities. I continue to be town attorney for Andover, Ashford, and Chaplin.

My strong interest in **HB No.5183** comes from my experience as a town attorney. I have represented towns in numerous municipal tax appeals. Most appeals have come in recent years and have been filed by large commercial taxpayers rather than homeowners.

As you know, each year on October first, local assessors are required to publish the grand list. Each following year, usually by February 20th, a taxpayer may appeal their property tax assessment to the local board of assessment appeals.

Soon after receipt of the board of assessment appeals decision, a taxpayer may appeal to the superior court per General Statutes section 12-117a. A second statute, section 17a-119, allows an appeal directly to the superior court for limited reasons within one year of the valuation date.

Whereas in a 12-117a tax appeal, the taxpayer must show that the property was over assessed, in a 12-119 tax appeal, the taxpayer must show that the assessment resulted from an illegal act of the assessor.

HB No. 5183 proposes that a subsection (b) be added to both sections 12-117a and 12-119, as follows: “(b) A contingency fee agreement between an attorney and an applicant is prohibited in any appeal brought pursuant to this section wherethe property that is subject of the appeal is commercially used property having an assessed value of one million five hundred thousand dollars or more.”

I support this bill, but if it were left to me alone, I would impose an absolute ban on contingency fee agreements in municipal tax appeals.

On December 14, 2014, **Connecticut Magazine** published an article by Christopher Hoffman. Here are some quotes and paraphrases from that article.

“Connecticut municipalities are hemorrhaging at least \$20 million of tax revenue a year from unjustified tax appeals. . . [L]ocal tax appeals have become big business in Connecticut . . . [T]ax representatives . . . and lawyers earn millions of dollars a year challenging local assessments . . . [A Hartford law firm] sends emails to prospective customers already known to the firm . . . The client only pays if the tax representative wins a reduction, **the fee being a third to half of any savings**. . . The offers are hard to resist because . . . tax representatives charge taxpayers nothing up front.”

“By working on contingency, tax representatives can swamp a town with questionable tax appeals at very little cost to them and none to their clients . . . Many large corporations routinely appeal assessments, a practice viewed as a tax avoidance strategy instead of a dispute over value . . . Facing deep pocketed corporations, big potential legal bills, years of delay **and pressure from the courts to avoid trials**, assessors say they have no choice but to settle in all but the most egregious cases.”

“Meanwhile, homeowners and [smaller] businesses get left holding the bag for successful appeals . . . “For every stipulated judgment granting a reduction, a tax increase gets passed on to every other taxpayer in town.”

“Assessors’ biggest complaint is the failure of the Tax and Administrative Appeals Court in the New Britain Superior Court to make taxpayers provide documentation that municipal values are wrong. . . During early pretrial conferences judges do not require plaintiffs to present formal appraisals or detailed rebuttals of assessments. Instead, they let them submit rudimentary, often deeply flawed ‘analyses’ supported by little or no data and prepared by un- or under-qualified consultants . . .”

“ [Pretrial] judges give these often questionable values the same credence as the town’s carefully calculated and voluminously documented assessments **and then try to get the parties to meet in the middle**. That effectively flips the burden of proof from the taxpayer, where the law puts it, to the town . . . But some . . . lawyers who defend towns in tax appeals avoid the New Britain tax court, saying local courts are quicker to compel taxpayers to provide hard evidence.”

This summary of the **Connecticut Magazine** article is totally consistent with my experience. Until the New Britain Tax Court was fully up and running and well known by Eastern Connecticut judges as the place to send tax appeals and relieve the local docket, I had very few tax appeals to defend in the towns I represent. In the past few years, however, almost every big commercial tax payer in my towns has appealed, represented by a large law firm with tax appeal specialists who always move the local court to refer the case to New Britain. I have opposed such referrals to no avail.

A few years ago, I had to defend my first case in which I discovered that a large commercial taxpayer had a contingent fee rather than hourly rate agreement with its lawyer when the lawyer failed to return my phone calls and answer correspondence, obviously trying to limit her time spent on the case. I did all I could to make the lawyer work and lo and behold the case was withdrawn. Since then, I have had no such luck.

I do not know for a fact that the large firm lawyers in the several “big money” appeals I defended in more recent years had contingent fee deals with their clients, but given their approach in my cases, I would be surprised to learn they were paid by the hour. Contingent fee lawyers apparently own a large interest in these potentially big money cases, and are using to their lucrative advantage their own specialized expertise and excessive financial power, and what I consider to be the special tax court’s pretrial approach to rush cases to settlement by urging overmatched assessors to agree to **split the difference** or likely get a similar result after an expensive trial.

There was and perhaps still is a New Haven law firm advertising on the internet as “New Haven Property Tax Lawyer,” claiming that “Our firm has been successful in 100 percent of our tax appeals. We have achieved several multimillion dollar reductions in property values for our clients.” I will bet they did, given the current situation, and they have done so to the detriment of numerous unsuspecting homeowners and small business owners who have had to make up the loss.

Opposition to this excellent bill comes from those who profit at the expense of residential taxpayers and small businesses. I am puzzled to learn that the Connecticut Business and Industry Association publicly opposes this bill which would benefit the vast majority of its members located in larger cities and towns.

In the public interest, contingent fee agreements should be banned as proposed by HB No. 5183. I admire and commend you for raising this bill and for favorably acting upon HB 6945 last year.

Respectfully submitted,
/s/Dennis O’Brien
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