

# Transportation Committee

## JOINT FAVORABLE REPORT

**Bill No.:** HB-5314

AN ACT CONCERNING RECOMMENDATIONS BY THE DEPARTMENT OF

**Title:** TRANSPORTATION.

**Vote Date:** 3/23/2018

**Vote Action:** Joint Favorable Substitute

**PH Date:** 3/5/2018

**File No.:**

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### SPONSORS OF BILL:

Transportation Committee

### REASONS FOR BILL:

- Lapses to the STF the balance in the fund for emergency aid to roads, bridges, and dams; fund contains excess Town Aid Road appropriations from prior fiscal years (§ 1)
- Restores the department's authority to charge encroachment permit fees, which was inadvertently eliminated in the FY 18-19 budget act (§ 2)
- Allows DOT contracts with transit districts and other common carriers to include a provision that indemnifies and holds harmless such entities, in order to allow the state to purchase insurance with a deductible clause (§ 3)
- Eliminates a requirement that the DOT commissioner draft an express finding before entering into a public transportation contract (§§ 4 & 13)
- Changes incorrect statutory references (§§ 5 & 6)
- Allows commercial vehicles to cross at railroad crossings without stopping to look and listen for a train, as long as the intersection has the appropriate traffic signal devices (§ 7)
- Limits the exception to the laws on parking near intersections that was made for New Haven last year to intersections comprised only of roads under the city's jurisdiction (§ 8)
- Prohibits smoking in bus shelters (§ 9)
- Allows state agencies that must submit federal affirmative action plans to submit such plan to CHRO instead of the plan required under state law; deems the plan approved under state law for the period that the plan meets applicable federal standards (§ 10)
- Requires DOT to erect speed warning signs on Interstate 95 between Old Saybrook and East Lyme (§ 11)

- In the event that the AV task force chairs have not been selected or have not scheduled the group's first meeting by the deadline (August 27, 2017), bill requires a Transportation Committee chair to schedule the first meeting of the autonomous vehicles task force and act as the group's chair until the task force's chairs are selected (§ 12)

## **RESPONSE FROM ADMINISTRATION/AGENCY:**

### **Commissioner, James Redeker, Department of Transportation-**

#### **Sec. 1: Town Aid Road Emergency Relief**

CTDOT distributes Town Aid Road (TAR) grants to the state's 169 municipalities and 5 boroughs, which can use these funds for a variety of transportation related purposes. The amount of TAR grants allocated to each municipality is based on several factors including population, miles of improved roads, and miles of unimproved roads. The calculation process that the Department had used to determine the proportionate amount to be allocated to each town historically resulted in a balance of undistributed funds in the TAR appropriation. This proposal would allow the current balance - \$871,792 - to lapse into the resources of the Special Transportation Fund.

#### **Sec. 2: Encroachment Permit Fee**

PA 17-2, Sec. 673(b), of the June 2017 Special Session, removed the Department's ability to charge for encroachment permits. This section would reinstate that ability.

#### **Sec. 3: Statewide Insurance Consortium**

There are thirteen statutorily authorized transit districts in Connecticut that are responsible for providing local fixed route bus service and/or Americans with Disabilities Act (ADA) paratransit services. CTDOT has awarded a contract to the Greater Hartford Transit District (GHTD) to purchase an insurance policy and administer claims for the thirteen transit districts. While CTDOT has entered into this agreement with GHTD since the 1990s, a recent review by the Office of the Attorney General (OAG) determined that CTDOT requires statutory authority to enter into a contract with GHTD for the insurance program. Because OAG did not identify this issue until recently, it has provided a 6-month extension to allow time for CTDOT to pursue statutory authority. Cessation of the Consortium would adversely impact statewide transit operators by placing a significant, undue financial obligation on their annual operating budgets should they seek to acquire their own insurance coverages.

#### **Sec. 4 & 12: Express Finding**

This would streamline public transportation contracting by eliminating the express finding requirement. This additional rote finding adds no value yet requires staff resources for drafting, legal staff review, the Commissioner's signature, compilation with the draft agreement, and review by the Attorney General along with all of the other agreement attachments. This occurs for many individual agreements and perpetually slows down the agreement process to no benefit to the State or agency.

#### **Sec. 5: Administration of Public Transportation**

Currently, some public transit routes are operated by private contractors possessing very old "certificates of public convenience and necessity" previously issued under CGS 13b-80.. The outdated certificate authority limits the Department's ability to modify and reorganize bus service to address changing demographics, employment centers, and other community and economic development. The current arrangement also provides no incentive for the certificated-operator to deliver the best possible service for the least cost. This section would provide for competitive procurements which the Department anticipates will ensure improved quality of service for the citizens of Connecticut and the visiting public, and may reduce the amount of subsidy the State currently provides.

#### **Sec. 6 & 7: Federal Motor Carrier Safety Administration**

CGS 13b-102(b) and 13b-109 refer to the Federal Highway Administration (FHWA) in two instances which should refer to the Federal Motor Carrier Safety Administration (FMCSA).

#### **Sec. 8: Certain Motor Vehicles at Railroad Crossings**

This section would provide an exception, provided by Federal law, to the requirement that commercial motor vehicles transporting passengers or hazardous materials stop at a railroad grade crossing to

listen and look, if the railroad grade crossing is controlled by a functioning highway traffic signal transmitting a green indication, which permits the commercial motor vehicle to proceed across the railroad tracks without slowing and stopping

*Please note, CTDOT requests one change: bill language refers to "49 CFR 39.10," which should read "49 CFR 392.10".*

#### **Sec. 9: New Haven Parking Exception**

PA 17-230, Sec. 16, provided the city of New Haven with an exemption from parking requirements within 25 feet of a stop sign or crosswalk if there was a curb extension/bump out treatment. This section clarifies that this exemption only applies to roads under the jurisdiction of the city of New Haven, not on State roads.

#### **Sec. 10: Smoking on Rail Platforms**

Both New Jersey and New York have implemented smoke-free laws prohibiting smoking at rail station platforms. The State of Connecticut has posted "No Smoking" signs on platforms, but there is no ability to enforce the prohibition. Rail platforms and bus shelters hold groups of commuters in tight spaces as they wait for their train or bus, and without the ability to enforce a smoking prohibition, these commuters are at risk of secondhand smoke exposure. This section would add rail platforms and bus shelters to the list of locations where smoking is prohibited.

#### **Sec. 11: Affirmative Action Plans**

Because of the different data reporting requirements surrounding the methodology for the setting of numerical hiring and promotion goals, complying with both the Federal and State Regulations is not possible at the same time. The result would be conflicting goals placing the Department in an impossible situation where the Department will not be in compliance with one or the other.

The CHRO affirmative action plan requires numerous staff hours to craft and develop over a 3-month period. By eliminating this requirement, Equal Employment Opportunity staff could devote their time to proactive efforts for CTDOT via education/training, mediation, recruitment, the ability to investigate discrimination complaints in a timely manner, implementation of the plan as a whole, and the use of the current census data.

### **NATURE AND SOURCES OF SUPPORT:**

#### **Cheryl A. Sharp Deputy Director Connecticut Commission on Human Rights and Opportunities (CHRO).**

Opposition to Section 11 of HB 5314. This section allows any state agency, department, board, or commission that maintains a federal affirmative action plan or a federal equal employment opportunity plan to submit such plan to the CHRO in lieu of the state affirmative action plan currently required in CGS §46a-68. The CHRO is the state agency tasked with eliminating discrimination in our state.

Most state agencies only have to develop and file state affirmative action plans. The exception for this is when an agency receives federal funding. Federal law treats such agencies as federal contractors and requires them to file plans with the federal government. Fortunately, Connecticut's laws are more expansive than their federal counterparts so agencies can often submit their state required affirmative action plan to the federal government without having to go through the effort of drafting another plan.

primary issue with this language is that our state anti-discrimination statutes protect more than federal law does. For example, under federal requirements, agencies only have to consider the protected classes of race, color, religion, sex, and national origin. Connecticut, on the other hand, protects not only each of these classes but also creed, marital status, ancestry, mental disability, physical disability, age, prior criminal conviction, genetic information, sexual orientation, and gender identity. The CHRO also has concerns regarding line 513 which states that the agency in question may submit to CHRO either a federal affirmative action or equal employment opportunity plan "or report." While it is unclear what specific report is referred to here, several of the federal reports, such as the EEO1, only require an agency to submit a brief 1-3 page form. This is in no way substantially equivalent to an affirmative action plan as envisioned under current state law.

## NATURE AND SOURCES OF OPPOSITION:

### **Jeffrey J. Mirman-DATTCO, Inc., The New Britain Transportation Company, Collins Bus Service, and Nason partners, LLP d/b/a Kelly Transit Company.**

At no time has the Commissioner suggested that these bus companies are not providing a public service or not meeting the public need for the service. That remains true today. These companies are already satisfying the public need for the service. As the need was being satisfied, there was no justifiable reason for the Commissioner to condemn the Certificates, and no reason to condemn the Certificates other than to give the right to provide the service to another company. For reasons which have not been made clear to the companies, the DOT continues to try and take these Certificates from the companies, Certificates which have provided the opportunity to provide the service they have exclusively and more than satisfactorily provided for many decades. DOT now seeks with this proposed legislation to define sufficient cause to take the Certificates so that the taking will be a *fait accompli* once the legislation is passed.

The legal flaw in Section 5 of the Raised Bill, which proposes to repeal Section 13b-80 and add new language to the statute. The proposed legislation adds the following language to the existing statutory language:

“Sufficient cause [to suspend or revoke a certificate of public convenience and necessity] shall include, but be not limited to, the circumstance where a route set forth in a certificate of public convenience and necessity overlaps, in whole or in part, with a route set forth in a contract issued to the holder of such certificate pursuant to Section 13b-34, as amended by this act.”

You should all know that while the Certificate vests the bus companies with the exclusive right to operate over the routes covered by the Certificate, each company has a contract with the DOT pursuant to Section 13b-34. The companies can operate service over the routes Covered by their Certificates without a contract. The DOT and the companies have recognized this requirement for perhaps 100 years. In December, 2016, the Connecticut Supreme Court held the Commissioner lacks the authority to condemn the bus companies' Certificates. *DATTCO, Inc. v. Commissioner of Transportation*, 324 Conn. 39 (2016). The Commissioner now seeks to avoid the consequences of that decision with this legislation, legislation that would undeniably lead to the unjust and unnecessary revocation of the certificates without just compensation.

### **Thomas Snow-Collins Bus Service-**

The commissioner of the Department of Transportation recently attempted to strip these certificates away from companies like ours via eminent domain. That case made its way to the Connecticut Supreme Court in December of 2016 with the court recognizing the validity and value of the certificates for our companies. The proposed changes to the statute are nothing more than the DOT's next attempt at revoking these certificates. Within the last year, through a questionable bidding process that resulted in only one company bidding for the operating rights, the DOT added routes which overlap pre-existing ones. Rather than expand the already established routes, the DOT's choice resulted in buses from multiple companies running on top of one another, increasing costs for taxpayers. There is already wording in the existing law to allow for the revocation of the certificates for sufficient cause. Broadening the scope of what it means to have sufficient cause in this manner will have dire consequences for small businesses including ours. You will see businesses close. You will see drivers, mechanics, cleaners and administrative employees laid off. I believe the certificates currently in place have enough value to make changes unwarranted. As a private operator our expenses are considerably lower than that of HNS Management, the current contractor operating CT-Transit.

**Reported by: Philip N Mainiero**

**3/28/18**

