

# Government Administration and Elections Committee

## JOINT FAVORABLE REPORT

**Bill No.:** HB-5264

AN ACT PERMITTING BUSINESSES TO SEEK AN OPINION OF THE

**Title:** ATTORNEY GENERAL REGARDING STATE AGENCY REGULATIONS.

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

**Vote Action:** Joint Favorable

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

**File No.:** 353

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### **SPONSORS OF BILL:**

Government Administration and Elections Committee

Rep. Craig C. Fishbein, 90<sup>th</sup> District

Rep. John Fusco, 81<sup>st</sup> District

### **REASONS FOR BILL:**

When a business has a difference of opinion about the application of a regulation with a state agency, it would allow them to seek a declaratory ruling from the Attorney General (AG).

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

#### **George Jepson, Attorney General, State of Connecticut**

The Attorney General has serious concerns about the proposal. Under current law, the attorney general is limited to defending state agencies when third parties appeal declaratory ruling to court under UAPA. The bill would allow businesses to seek an opinion from the AG's office when they have a bona fide dispute with a state agency over the application of a regulation of that agency. Presently, the AG is only authorized to provide legal opinions to certain state officials and even then the opinion is non-binding. Additionally, the AG can only provide opinions to the General Assembly, the legislative leaders and the heads of executive departments, state boards and commissions. The AG has no authority to provide legal opinions to rank and file legislators, legislative committees, municipalities or members of the general public.

The Attorney General sees numerous issues because the AG provides legal representation to the state agencies charged with enforcing regulations. If the AG provides opinions to businesses that have interests and positions contrary to that of state agencies, he believes it would undermine his ability to provide the legal representation he is required to provide.

Furthermore, the AG believes he is not suited to issues the opinions required by the bill because the administrative process is based on the belief that administrative agencies have expertise in the fields they regulate and determine the proper application of their regulations.

Finally, the proposal would have a large fiscal impact and would overwhelm the AG's staff.

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

### **House Republican Caucus**

The bill is a House Republican proposal that would allow businesses to seek a declaratory ruling from the AG when a business has a difference of opinion with a state agency about the application of a regulation. The House Republican caucus believes that the bill would help small businesses by allowing them to clarify the interpretation and application of an agency regulation without a large cost. Currently, a business needs to go through the hearing process and hire legal counsel and miss time from work.

### **Eric Brown, Connecticut Business and Industry Association (CBIA)**

CBIA supports the bill with some modifications. CBIA's members have vocalized concerns that some agencies may interpret their regulations that seem inconsistent with the language of the regulation or intent of the underlying authorizing statute, or previous interpretations of the statute. They argue that these types of practices do not make Connecticut an attractive place to do business.

CBIA believes the bill will help make for a more efficient and effective process in handling concerns that businesses have in addressing concerns with agency ruling.

They suggest that the bill be amended to show when an agency commissioner receives a written complaint from a business concerning their agency's application of a regulation, the commissioner submit a copy of such complaint to the Attorney General and to the legislature's Regulations and Review Committee. They also believe that the bill should also ensure that the commissioner of the affected agency as well as the Regulations and Review Committee have the authority to request an opinion of the Attorney General as to the substance of the complaint.

### **Joe Horvath, Director of Legislative Outreach, Yankee Institute for Public Policy**

In order to make Connecticut more attractive to business and competitive with its neighboring states, it should pass HB 5264. It would help to "create and maintain a complementary, remedial network of regulatory enforcement." Horvath argues that according to the Mercatus Center at George Mason University, Connecticut's regulatory mandates are dense with over 96,000 regulatory restrictions. By enhancing navigation resources, questioning unnecessary regulations, and granting businesses a second chance when they haven't harmed someone. Connecticut could greatly improve its relationships with businesses.

## **NATURE AND SOURCES OF OPPOSITION:**

### **Raphael L. Podolsky, Public Policy Advocate, Connecticut Legal Services**

Mr. Podolsky argues that the bill seems to raise questions about the role of legal counsel within state agencies. Agency attorneys are commonly involved in the drafting of regulations, the provision of in-house legal advice, and the settlement of disputes. He believes that the

bill is not clear in its intent, specifically, if it is meant to repeal the authority for agencies to have in-house legal counsel. Additionally, the bill requires the AG to give legal opinions when requested by a business. Mr. Podolsky states that the AG is not mandated to give a legal opinion even when requested by an agency and that “a requirement to give an opinion to a potential adverse party raises questions of procedure, confidentiality, and conflict of interest”.

**Margaret Miner, Executive Director, Rivers Alliance of Connecticut**

The bill would add another barrier to regulatory protection of natural resources. Ms. Miner argues that the bill would, “create a conflict of interest in the AG’s office between its duty to its client (the state) and any number of new clients wanting the AG to represent them against the state>.

**Leah Schmalz, Chief Program Officer, Connecticut Fund for the Environment**

Ms. Schmalz argues that by adding businesses to the list of people who could seek an advisory opinion from the Attorney General is a drain on state legal resources and an attempt to “secure privileges for special interests”. She argues that businesses should seek their own council instead.

**Reported by: Susan Tufts**

**Date: 4/10/18**