

**Testimony Opposing Raised Bill No. 6484:**  
**AN ACT CONCERNING RECOMMENDATIONS BY**  
**THE DEPARTMENT OF TRANSPORTATION**

Dominic Fulco III, Esq.  
Counsel to Dattco, Inc. and The New Britain Transportation Company  
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**Senator Cassano, Representative Lemar, Senator Somers, Representative Carney and distinguished members of the Transportation Committee:**

My name is Dominic Fulco and I practice law in Hartford with the firm Reid and Riege, P.C. I represent and provide this written testimony on behalf of two privately held and family-owned bus companies that presently provide transportation services to the citizens of the State of Connecticut — Dattco, Inc. (“Dattco”) and The New Britain Transportation Company (“NBT”) (collectively, the “Companies”).

For the reasons that follow, the Companies oppose those portions of Sections 7 and 8 of Raised Bill No. 6484 which seek to amend Sections 13b-34 (“Section 13b-84”) and 13b-80 (“Section 13b-80”) of the General Statutes and remove the 100 year statutory requirement that all operators of a motor bus have a Certificate of Public Convenience and Necessity (the “Certificate”) by providing an exception that if a person or entity is awarded a contract by the Department of Transportation (the “Department”) to provide motor bus services that person or entity does not need a Certificate.

Sections 7 and 8 of Raised Bill No. 6484 are identical to Sections 2 and 3 of Raised Bill No. 151 proposed by the Department in the last legislative session. On February 24, 2020, on behalf of the Companies, I submitted opposition to and spoke against Raised Bill No. 151 at the Transportation Committee’s hearing regarding Raised Bill No. 151.

As I will elaborate, the proposed amendments are the Department’s latest attempt to deprive the Companies of their constitutionally protected property rights in their Certificates, as those rights were found by the Connecticut Supreme Court in one of the lawsuits brought by the Companies against the Department over their Certificates. Moreover, these proposed amendments will also deprive any other holders of Certificates of Public Convenience and Necessity for motor buses of their constitutionally protected property rights. This should not be sanctioned by this Committee by moving forward with the proposed amendments.

The Companies speak against this proposed legislation, for the following reasons:

- There is no valid reason for this legislation. The requirement that a person or company must obtain a Certificate before operating a motor bus has been around for almost a century. There exists an important reason why that process has been in place for so long: public convenience and necessity must be shown by an applicant and certified by the Department. Permitting the Department to circumvent the Certificate requirement by issuing a contract would allow the Department to give away motor bus routes without the showing of a public need and for any reason whatsoever. This legislation would exclude input from the towns and boroughs where the routes are located and other holders of Certificates affected. As such, the proposed amendment removes accountability of the Department.

- Abolishing the Certificate requirement would by legislation create an “inverse” condemnation of the Companies’ Certificates since those Certificates would be rendered valueless by authorizing the Department to grant the right to operate a motor bus by merely issuing a contract. This would strip the Companies’ of their constitutionally protected rights and it would spawn more litigation where the Companies seek just compensation from the State for their Certificates. We are of the belief that the Companies would prevail in that litigation costing the state tens of millions of dollars in damages for the “taking” of constitutionally protected property rights.
- This legislation is inconsistent with what should be the State's goal of encouraging private enterprise accompanied by quality service. The State should be in the business of encouraging private enterprise, not competing with that enterprise and then taking over the business for itself.
- This proposed legislation is designed to target family owned bus companies who have been battling with the Department both in the courts and before the Legislature for a decade to protect their rights. This legislation, then, is not designed to promote the public good, but is proposed to punish these individual companies because they have dared to pursue their desire to remain in business, providing a public service they have provided for, in some cases, decades. This raises another significant constitutional problem with the proposed legislation.

The Companies are an integral part of the state busing system, providing safe and efficient transportation to the citizens of Connecticut. The Companies' busing services presently provide public transportation options that help people commute to work, school, shopping and entertainment. These services relieve congestion on Connecticut roadways and are already a cost effective, safe, and reliable service that many Connecticut citizens rely on daily. Despite this, the Department, in connection with the opening and operation of CTfastrak, which is commonly referred to as the “Busway”, has engaged in a mission to interfere with this service and to take away the Companies’ property rights in their Certificates.

The Companies have expended tens of thousands of dollars in legal fees in rebuffing the Department’s efforts and in 2016 obtained a decision by the Connecticut Supreme Court in their favor and against the Department protecting their property rights in their Certificates and defeating the Department’s attempt to condemn their Certificates. *Dattco, Inc. et al v. Commissioner of Transportation*, 324 Conn. 39 (2016). In *Dattco*, the Supreme Court concluded that the Companies have constitutionally protected property rights in their Certificates. As such, the Companies cannot be deprived of rights in the Certificates without due process of law. My clients have three pending lawsuits against the Department to protect their rights in their Certificates. <sup>i</sup>

We think it is necessary to provide our understanding of a more complete background history, including litigation by the Companies against the Department, leading to these proposed amendments.

Since 1921, it has been the law in Connecticut that, by statute, no person or company is permitted to operate bus service within the state without having a Certificate. The statute now in place providing for the Certificate and the process to obtain one is Section 13b-80. Prior to 1979, Certificates were issued by the Division of Public Utility Control within the Department of Regulation. Since 1979, those Certificates have been under the jurisdiction of, and regulated by, the Department of Transportation.

Under Section 13b-80, in order to obtain a Certificate, a person or company must first make written application to the Department . The applicant has the burden of proving that there is “public convenience and necessity” requiring the operation of a motor bus over the route sought by the applicant. As provided in that statute, the Department must certify the existence of such public convenience and necessity. Once the application is received, the Department provides notice to the town or borough through which the applicant’s route will operate and to any other certificate holder who operates over any portion of the applicant’s proposed route or parallel to such route. A public hearing was required under Section 13b-80 prior to 1997 at which time the statute was amended to provide for a hearing at the discretion of the Department. Once issued, the Certificate, which establishes that there is a public need for the bus service over particular routes covered by the Certificate "shall remain valid unless suspended or revoked by the Department of Transportation."

Certificates have historically been issued to companies to provide their holders the exclusive right to operate bus services along the routes specified in the Certificate. This type of “monopoly” was approved by the Connecticut Supreme Court back in 1922 shortly after the predecessor statute to Section 13b-80 was enacted when it rejected a claim based on those grounds. <sup>ii</sup>

In August of 1980, the DOT issued a three-part report discussing the history and then-current status of the transportation system in Connecticut. The Department stated:

Motor buses regulated by the State Department of Transportation are authorized to operate over certain franchise routes (routes for which they have exclusive rights to provide service.)<sup>iii</sup>

Dattco, headquartered in New Britain, owns Certificate No. 11 which dates back to 1924. NBT, headquartered in Berlin, owns Certificate No. 10 which dates back 100 years to 1921. Dattco and NBT have been providing exclusive fixed route bus service or express commuter bus service for specific routes for decades, all pursuant to their Certificates. For decades, the Companies have had contracts with the DOT to provide public motor bus service to the citizens of Connecticut. Those contracts provide for the terms of the service and the payment for the service to be provided.

Although the system had been working perfectly for closing in on a century, in 2010 the Department ought to change the system drastically, ostensibly by putting out to bid the various routes. The Companies’ belief at the time – and this belief has been borne out by subsequent events – was that the Department wanted to assume total control over the bus system in Connecticut to the detriment of the private companies, all with the coming Busway in mind. The Busway is dependent on access to and travel over the Companies' routes.

Putting the routes out to bid in 2010 would have unconstitutionally deprived the companies of their property and meant a death knell to the system of Certificates, for awarding routes to companies which did not have a Certificate covering those routes would have destroyed the exclusivity which each of the Companies possesses with respect to their routes. By awarding routes to companies without Certificates, the Department could then have awarded all routes to the state-controlled company –CT Transit – and eliminated the right of the private companies to operate.

Because this proposal challenged their very existence, the Companies brought suit against the Department in 2010, and the Superior Court issued a temporary restraining order against the Department's proposal to put the Companies' routes out to bid. In one of the lawsuits, the Court entered an injunction that protected the rights of the Companies that were plaintiffs, enjoining and precluding the Department from awarding to any company other than the plaintiffs service over the routes covered by their Certificates. That injunction continues today. Subsequently, the Court determined that, under Connecticut Supreme Court authority, certificates issued for bus routes may provide for exclusivity and the Court went on to conclude that certain Certificates of the Companies provided exclusivity. In another ruling in the Companies' lawsuits, a different judge has made an interlocutory ruling that the Companies' Certificates do not give them exclusive rights in the route governed by their certificates. This has created a conflict in the findings of Companies' rights relating their Certificates that must be resolved at the appellate level. In further support of Companies' claim that their Certificates give them exclusive rights over routes covered by their Certificates, a Superior Court in another action not involving the Companies has determined that holders of a Certificate have exclusive rights to operate routes covered by the certificate at issue in that case.<sup>iv</sup>

In March, 2014, thwarted in its effort to avoid compliance with Section 13b-80's grant of exclusivity to the bus companies, unable to revoke the certificates because the companies were meeting the needs of the public, and in an effort to assume total control over operation of the routes owned by the private companies, the Department issued notices of condemnation of each of the Companies' Certificates, claiming as authority Sections 13b-34, 13b-36, and 13-23 of the General Statutes. In issuing these notices of condemnation, the Department assigned a value to these Certificates of one dollar.

Because the Department's proposed taking of their Certificates threatened the Constitutional rights, the lifeblood, and in some cases livelihoods, of the Companies, they each brought suit challenging the authority of the Department to condemn their Certificates. As discussed above the Companies prevailed on their claims, in *Dattco*.

Of significance to the presently proposed amendments, in the pending lawsuits the Court ruled that a Certificate is required to operate motor buses even if the Department has contracted with an operator as it has done in the case of the Busway.<sup>v</sup> By the amendments to Section 13b-34 and Section 13b-80 in Raised Bill No. 6484, the Department seeks to, by legislation, overrule the Court's ruling and in essence abolish the system of Certificates. But as explained in this opposition, the legislation would in effect confiscate the Companies' Certificates, thereby causing compensable damage to the Companies.

Accordingly, the proposed legislation invites more litigation against the Department costing both the Companies and the State an expenditure of precious resources. The overall requirement of Certificates to operate motor buses has worked and should not be abolished so that the Department can circumvent existing law and Court rulings and given free rein to grant routes without the showing of public need.

This is not the first time that the Department has attempted to have the law changed relating to Certificates in the face of the Companies' court challenges. In 2015, Raised Bill 6821 was proposed to give the Commissioner of the Department the power to condemn the Certificates. The Companies appeared before this Committee speaking against that proposed legislation and it did not move forward. In 2016, Raised Bill 5411 was proposed to give the Commissioner the authority to revoke a Certificated where a route covered by a Certificate is the subject of a contract. Raised Bill 5411 sought to do essentially what the proposed legislation before you today – Raised Bill 151 – seeks to do: allow a contract to defeat the Certificate requirement. The Companies opposed that 2016 legislation before this Committee and that proposed legislation was defeated. Undeterred by its prior failures, in 2018 the Department again proposed legislation, Raised Bill 5314, to amend Section 13b-80 by specifically addition to the “sufficient cause” language allowing revocation of a Certificate a provision that sufficient cause exists where a route in a Certificate overlaps a route in a contract issued by the Department. That proposed legislation was also defeated. Finally, as discussed above, during the 2020 session, the Department sought amendments to Section 13b-34 and Section 13b-80 by Raised Bill No. 151. The Department's prior efforts to change 13b-80 were not successful and this Committee should rebuff the Department's present attempt to change the law.

On behalf of the Companies, we urge the Committee to reject the proposed amendments to Connecticut General Statutes 13b-34 and 13b-80.

Thank you for your consideration, and I welcome your questions.

Contact:

Dominic Fulco III, Esq.  
Reid and Riege, P.C.  
One Financial Plaza  
Hartford, CT 06103  
Email: dfulco@rrlawpc.com  
Telephone: 860- 240-1031  
Fax: 860-278-1150

Attorneys for:  
Dattco, Inc. and  
The New Britain Transportation Company

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<sup>i</sup> *DATTCO, Inc., et al v. State of Connecticut, Department of Transportation*, HHB-CV-10-6007261-S (transferred to HHD-CV-10-6079022-S (the “First Injunction Action”); *DATTCO, Inc. v. State of Connecticut*,

*Department of Transportation*, HHD-CV-14-6079021-S (the “Second Injunction Action”); *The New Britain Transportation Company v. State of Connecticut, Department of Transportation*, HHD-CV-15-6079020-S (the “Third Injunction Action”).

<sup>ii</sup> *Modeste v. Public Utilities Commission*, 97 Conn. 453, 455 (1922) (rejecting a claim by a scorned applicant that the statute then in existence improperly granted what is in effect a “monopoly” to one owner of a Certificate).

<sup>iii</sup> 1980 Connecticut Department of Transportation publication, "Connecticut Today Volume III Bus Service" (p. 22-23).

<sup>iv</sup> *Nason Partners, LLC v. Northwestern Connecticut Transit District*, Superior Court, Judicial District of Litchfield, Docket No. LLICV-13-500743, 2013 WL 3766890, (June 18, 2013, Danaher, J.).

<sup>v</sup> First Injunction Action, Second Injunction Action and Third Injunction Action Memorandum of Decision, February 11, 2019 (Moukawsher, J.).