

Legislative History for Connecticut Act

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HB 7322	PA. 209	1993
Sen:	3471-3473	(3)
House:	8027-8043	(17)
Jud:	<del>3674</del> -3485, 3562-3567, 674-677	(11p. 31p.)

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

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CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS  
1993

VOL. 36  
PART 10  
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WEDNESDAY  
June 2, 1993

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SENATOR LOONEY:

Yes, Madam President, I would so move.

THE CHAIR:

Thank you very much. Is there any objection to placing Senate Calendar 569, Substitute for House Bill 6895, on the Consent Calendar? Any objection? Hearing none, so ordered. Mr. Clerk.

THE CLERK:

Calendar No. 570, File 966, House Bill No. 7322, AN ACT CONCERNING SUMMARY PROCESS ACTIONS. (As amended by House Amendment Schedules "A" and "B").

Favorable Report of the Committee on Judiciary.

THE CHAIR:

The Chair would recognize Senator Jepsen.

SENATOR JEPSEN:

Thank you, Madam President. I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the House.

THE CHAIR:

Thank you very much, Senator. Do you wish to remark further?

SENATOR JEPSEN:

Thank you, Madam President. This bill cleans up an ambiguity or conflict between Connecticut and federal law with the delivery of Notices to Quit. Under

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current Connecticut law it is required that a Notice to Quit state an unequivocal debate when a tenant must quit the premises.

When serving in conjunction with certain federal termination notices, it can sometimes arise in a conflict because the federal termination notices under federal law require the landlord to give certain time periods to resolve conflicts.

Several courts have held that this renders the Connecticut service equivocal. This would make clear that when served in conjunction with a federal termination notice that a Connecticut Notice to Quit would not be rendered equivocal by whatever that federal notice said.

THE CHAIR:

Thank you very much, Senator. Would anybody else wish to remark on Senate Calendar 570? Are there any further remarks? If not, Senator --.

SENATOR JEPSEN:

I would like to move this to the Consent Calendar.

THE CHAIR:

Thank you very much. Is there any objection to placing Senate Calendar 570, House Bill No. 7322, on the Consent Calendar? Yes.

SENATOR ANISKOVICH:

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Madam President, I would object to that being placed on the Consent Calendar.

THE CHAIR:

Mr. Clerk, would you please make the necessary announcement for a roll call vote.

THE CLERK:

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber. An immediate roll call has been called for in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

Thank you very much, Mr. Clerk. The issue before the Chamber is Senate Calendar 570, House Bill 7322. The machine is on. You may record your vote.

Is Senator Harper going to come, do we know? Is Senator Harper going to come to vote, do we know? Have all Senators voted and your votes properly recorded? Have all Senators voted and your votes properly recorded? The machine is closed.

The result of the vote:

35     Yea  
0     Nay  
1     Absent

The bill passes.

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On page 5, Calendar 476, substitute for House Bill 7322, AN ACT CONCERNING THE NOTICE TO QUIT IN SUMMARY PROCESS ACTIONS. Favorable report of the Committee on Judiciary.

DEPUTY SPEAKER PUDLIN:

Representative Jarjura.

REP. JARJURA: (74th)

Yes, thank you, Mr. Speaker. Mr. Speaker, I move acceptance of the Joint Committee's favorable report and passage of the bill.

DEPUTY SPEAKER PUDLIN:

Question is on passage of the bill. Will you remark? Will you remark, Sir.

REP. JARJURA: (74th)

Yes, Mr. Speaker. Mr. Speaker, the Clerk has in his possession an amendment, LCO8748. I would ask that the Clerk please call and read the amendment, please.

DEPUTY SPEAKER PUDLIN:

Will the Clerk please call LCO8748, House "A".

CLERK:

LCO8748, designated House Amendment Schedule "A" offered by Representative Tulisano. In line 73, after "equivocal" and before the period, insert "PROVIDED THE RENTAL AGREEMENT OR LEASE SHALL NOT TERMINATE UNTIL AFTER THE DATE SPECIFIED IN THE NOTICE FOR THE LESSEE

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OR OCCUPANT TO QUIT POSSESSION OR OCCUPANCY OR THE DATE OF COMPLETION OF THE PRETERMINATION PROCESS, WHICHEVER IS LATER".

DEPUTY SPEAKER PUDLIN:

Representative Jarjura.

REP. JARJURA: (74th)

Mr. Speaker, what this bill as amended does, is basically clarify a confusion that has developed in the case law that that attachment of a federal termination notice to the notice to quit, the State notice to quit, pursuant to section 47a-23 of the General Statutes does not render that notice to quit equivocal. There was a little bit of confusion between the case law whether or not the attachment of a federal termination notice rendered the State notice to quit equivocal and under the current law, a notice to quit must be unequivocal. And I move adoption of the amendment.

DEPUTY SPEAKER PUDLIN:

Question is on adoption. Will you remark?

Representative Kirkley-Bey, Madam.

REP. KIRKLEY-BEY: (5th)

Yes, I have a couple of questions, Mr. Speaker to the maker of this amendment.

DEPUTY SPEAKER PUDLIN:

Prepare yourself, Representative Jarjura.

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REP. KIRKLEY-BEY: (5th)

Mr. Jarjura, in this legislation that is being proposed, would it not make it much easier for tenants to be able to, many who do not have leases to be able to substantiate their part of the argument?

DEPUTY SPEAKER PUDLIN:

Representative Jarjura.

REP. JARJURA: (74th)

Through you, Mr. Speaker, substantiate their part of the argument with regard to what?

REP. KIRKLEY-BEY: (5th)

The notice to quit which is to leave the premises, I would imagine.

DEPUTY SPEAKER PUDLIN:

Representative Jarjura.

REP. JARJURA: (74th)

Through you, Mr. Speaker, the notice to quit is the first stage in the eviction process. Before a person can be evicted, they must be served with a notice to quit.

REP. KIRKLEY-BEY: (5th)

I know that.

REP. JARJURA: (74th)

With regard to some of the federal housing programs, there is also a federal termination notice.

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What the federal termination notice provides for is the opportunity of the tenant to correct the problem. So, it doesn't specify a date certain or it is not unequivocal as to termination of the lease. What was happening is that they were serving both the notice to quit with the federal termination notice and one court had ruled that that rendered the State notice to quit, invalid.

REP. KIRKLEY-BEY: (5th)

Mr. Speaker, through you to Representative Jarjura.

DEPUTY SPEAKER PUDLIN:

Proceed, Representative Kirkley-Bey.

REP. KIRKLEY-BEY: (5th)

You talked about taking care or remedying the property. I come from a neighborhood and I am assuming that you are talking about damage to the premises in which the person lives. Is that not so?

REP. JARJURA: (74th)

Well, there could be, through you, Mr. Speaker, there could be several reasons for a notice to quit. Non-payment of rent, the lease has ended, willful destruction of property.

DEPUTY SPEAKER PUDLIN:

Representative Kirkley-Bey.

REP. KIRKLEY-BEY: (5th)

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Mr. Speaker, through you, the reason that I rise and ask this question is in the neighborhood that I live in, we had a landlord who had 120 tenants in a house with 650 violations. That had been there for seven years. He had been cited and cited and cited. And many of the houses in the major cities have absentee landlords who do not do anything to their properties. My concern in this issue, how do I protect the individuals who may be getting a letter from the landlords who are putting the blame falsely upon the tenants, in this case? I right now have before me, a man who is living in a house with lead. He has six children. Three of them have received lead poisoning tests and they exceed the allowable guidelines and yet, his landlord, for three years, will not fix his property and now he is trying to move.

So, I am concerned about the other end of this which is how do you protect the tenants who are being victimized by absentee landlords and landlords who vagrantly do not adhere to the law or the notices that they get from the Department of Licensing and Inspecting in our individual towns?

DEPUTY SPEAKER PUDLIN:

Representative Jarjura.

REP. JARJURA: (74th)

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Through you, Mr. Speaker, what the tenant, although that is not specifically related to what we are trying to do with this bill. What the tenant can do is fight the notice to quit in housing court and if the landlord is in violation of the housing code, or the Department of Health Services regulations or codes or statutes, that is an affirmative defense to a notice to quit and basically, the tenant can pay the rent into the Housing Court and that money can be used to cure any defects that may occur or be present on the property.

So, there are various remedies available to tenants, through the Housing Court and ultimately, the Superior Court.

DEPUTY SPEAKER PUDLIN:

Representative Kirkley-Bey.

REP. KIRKLEY-BEY: (5th)

Thank you, Mr. Speaker. I really do have some concerns with regard to whether or not this bill would be as fair to tenants. It seems to me to be more pro landlord, so I would urge the members of the Chamber to really think about what is being done here and I would urge not passage of this amendment.

Thank you, sir.

DEPUTY SPEAKER PUDLIN:

Thank you, Ma'am.

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REP. BELDEN: (113th)

Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Belden.

REP. BELDEN: (113th)

Mr. Speaker, just to clarify in my own mind the process that the amendment in fact generates. The way it reads, it indicates that the lease shall not terminate until after the date specified in the notice. Does that mean that we're talking about default of a provision of the lease and that is why the eviction is being requested, or is there some other meaning to that? Through you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Jarjura.

REP. JARJURA: (74th)

Through you, Mr. Speaker, there could be several reasons for notice to quit the issue, one including non-payment of rent. One could be that the lease is terminated. It could be a month to month lease that is terminated. It could be a destruction of the property. There are several reasons that that could be specified, and I think they're outlined in the bill itself, which is not being changed here.

DEPUTY SPEAKER PUDLIN:

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Representative Belden.

REP. BELDEN: (113th)

Thank you. Mr. Speaker, in a specific instance that I'm trying to address here there is a lease in effect. During that time period would the only reasons for notice would have to be some default of the lease provisions. Through you, Mr. Speaker. Be it non-rent, demolishing of the premises, etc.

DEPUTY SPEAKER PUDLIN:

Representative Jarjura.

REP. JARJURA: (74th)

Through you, Mr. Speaker, that's correct. It would have to be some violation of the lease agreement.

REP. BELDEN: (113th)

Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Thank you, sir. Will you remark further on "A"? If not, let me try your minds. Those in favor of House "A", signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER PUDLIN:

Those opposed, may. The ayes have it. The amendment's adopted and ruled technical. Will you remark further on the bill as amended? Representative

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Munns.

REP. MUNNS: (9th)

Thank you very much, Mr. Speaker. Mr. Speaker, the Clerk has an amendment LCO No. 4899. Would he please call and I be allowed to summarize, unless he prefer to read it.

DEPUTY SPEAKER PUDLIN:

Will the Clerk please call LCO4899, House "B".

CLERK:

LCO No. 4899, designated House "C", offered by Representative Munns.

DEPUTY SPEAKER PUDLIN:

Did you say "B"?

CLERK:

I meant to say House "B".

DEPUTY SPEAKER PUDLIN:

I'm glad you did. Representative Munns has asked leave of the Body to summarize. Hearing no objection, proceed, sir.

REP. MUNNS: (9th)

Thank you, Mr. Speaker. Mr. Speaker, this amendment does two things. The first thing it does in the appeal process before the statutes wrote that the defendant, when the defendant is appealing that the order shall remain in effect. This basically just takes out

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defendant and puts any party, and the second party, what this does is in the appealing process, the tenant does not have to, at present does not have to continue to pay the rent to the court, which they do during the procedure, and this basically just has them continue to do that and wait until the verdict comes out and then they do whatever the judge decides with the money, and at this point, Mr. Speaker, I'd like to move adoption.

DEPUTY SPEAKER PUDLIN:

Question is on adoption. Will you remark?

REP. MUNNS: (9th)

Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Jarjura.

REP. JARJURA: (74th)

Yes, Mr. Speaker. Representative Munns and myself have had some conversations regarding this amendment. We consider this to be a friendly amendment, just so the members in the Chamber know, I've discussed this with the advocates for the low income housing. They don't have a problem with it, so I would consider it a friendly amendment, and I urge adoption, too.

DEPUTY SPEAKER PUDLIN:

Will you remark further on House "B"?

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Representative Carter.

REP. CARTER: (7th)

Thank you. Mr. Speaker, through you, to the  
proponent of the amendment.

DEPUTY SPEAKER PUDLIN:

Proceed, madam.

REP. CARTER: (7th)

My question is, I guess I'll make my statement  
first, is that when a person has a notice to quit, and  
they have to go to court, they have to pay. You are  
obligated from the first day of the month to pay your  
rent, and when you go into court, you are still  
obligated to pay your rent in the court. You cannot  
not pay your rent because you are going into court, so  
I don't see this as a friendly amendment. I mean  
someone else may. I just think it seems to be undoing  
some of the stuff that have the courts doing now.

Now I know that Representative Kirkley-Bey tried to  
give you a for instance a few minutes ago about a  
landlord in her community who has over a hundred  
apartments. They all have violations. He sends them  
notices to quit when they don't pay the rent, and he  
has violations in there. I don't think you can hold a  
tenant accountable for sometime they get a notice to  
quit.

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A notice to quit is not an eviction notice. It is simply a notice to quit. I know that's all it's ever been the last 25 years I've been working in housing.

DEPUTY SPEAKER PUDLIN:

Will you remark further? Will you remark further?

REP. MUNNS: (9th)

Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Munns.

REP. MUNNS: (9th)

Thank you, Mr. Speaker. Representative Carter made a very good point, and I apologize, Representative Carter, if I didn't clarify the amendment well enough. If you look on line 49 of the amendment, this basically, this really deals with, it doesn't really change the process right now. It just continues, sometimes there's an appealing process, or an appeal in the procedure, and when that happens, it just continues the same procedure.

Currently right now, there has been situations where the tenant does not have to continue to pay the rent to the court like you pointed out, Representative Carter, and this just allows the procedure to continue. Just to use an example, very recently there was a situation in East Hartford where the appealing process

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took three years, and because it was the appeal process, the tenant no longer had to continue to pay to the court, like you had pointed out, so it took a long period of time, and then what happened was after the decision was made, there was a large sum of money of rent that wasn't paid, and basically never was paid, so that is why we're doing this, is just to continue the process during an appeal, so it really doesn't take away any of the rights of the tenants. Thank you, Mr. Speaker.

REP. CARTER: (7th)

Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Thank you, sir. Representative Carter.

REP. CARTER: (7th)

Mr. Speaker, when you do a notice to quit, through you, to the proponent, when you do a notice to quit, that is simply what it is. It is issued on the tenth day of the month because our laws say that you cannot do anything before the tenth of the month. A notice to quit is issued on the tenth day of the month. You have from the tenth to the 15th to start your eviction process. I don't see that in this you all are talking about the eviction process as much as you're talking about the notice to quit.

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The notice to quit is issued on the tenth and after the 15th day it is no longer valid because you as a landlord have to go into the eviction process, and at that point, as I understand it when I went in to fight this legislation before I got elected to make sure the housing court was put into existence, we said to that process, you need to pay into housing court the money that you owe the landlord.

Now how anyone get around that and continue to stay in a dwelling, I don't understand that, because at that point if they do, it is the judge's responsibility, and it is the judge's fault if they do at that point because once you're into the eviction process, past the notice to quit, it is then in the hands of the judge.

DEPUTY SPEAKER PUDLIN:

Representative Munns, do you care to respond, sir?

REP. MUNNS: (9th)

Yes, thank you, Mr. Speaker. I think for the third time on the amendment.

DEPUTY SPEAKER PUDLIN:

Well, hearing no objection, proceed, sir.

REP. MUNNS: (9th)

Okay, thank you. Just to reemphasize this just extends the process which Representative Carter just mentioned in the appeal process, and like I said this

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statute was the reason why in a particular situation that occurred with the East Hartford Housing Authority, during the appeal process which took approximately three years, those deposits, those rents were being paid to the court during the procedure. Once the appeal process started because statute doesn't require that anymore in the appeal process, they were no longer deposited to the court.

Therefore, we are just extending that process of paying the rents to the court during the appeal process also. Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Thank you, Representative Munns. Will you remark further on "B"? Representative Boughton.

REP. BOUGHTON: (109th)

Mr. Speaker, thank you. I rise in favor of this amendment. I urge adoption, and I want to tell you what the real world is like out there. I have a constituent this week who called. She's been six months trying to evict a person, or family, and it's not low income. It's over \$3,000 worth of back rent they owe. They're never going to pay this money, and it's still going on.

My daughter owns several rental properties. In the last year, she's had two that have gone five months

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without being evicted. She'll never get that money. The mortgages are due on those properties. The loss goes to the property owners and the renters, and I think that the law should be strengthened and that the process should be shortened so that the loss doesn't go to these people that are renting out these properties. Thank you.

DEPUTY SPEAKER PUDLIN:

Will you remark further on "B"? Will you remark? If not, let me try your minds. All those in favor of "B", signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER PUDLIN:

Those opposed nay.

REPRESENTATIVES:

No.

DEPUTY SPEAKER PUDLIN:

The ayes have it. The amendment is adopted, and ruled technical. Will you remark further on the bill as amended? Will you remark further on the bill as amended? If not, staff and guests to the Well of the House. Members, please be seated. The machine will be opened.

CLERK:

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The House of Representatives is voting by roll  
call. Members, to the Chamber. The House is voting by  
roll call. Members, to the Chamber please.

DEPUTY SPEAKER PUDLIN:

Have all the members voted? Is your vote properly  
recorded? If so, the machine will be locked. The  
Clerk will take the tally.

The Clerk will announce the tally.

CLERK:

House Bill 7322, as amended by House Amendment  
Schedules "A" and "B".

Total Number Voting	149
Necessary for Passage	75
Those Voting Yea	110
Those Voting Nay	39
Those absent and not Voting	2

DEPUTY SPEAKER PUDLIN:

The bill as amended passes.

CLERK:

On Page 8, Calendar 557, Substitute for House Bill  
5703, AN ACT CONCERNING POST CONSTRUCTION PERMANENT  
FINANCING OF AFFORDABLE HOUSING. Favorable Report of  
the Committee on Finance, Revenue and Bonding.

DEPUTY SPEAKER COLEMAN:

Representative Knopp.

JOINT  
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the proponents for pushing this issue forward and we urge your support for the substitute language that establishes the registry.

I'd also like to comment briefly on Committee HB5878, AN ACT CONCERNING ACCOUNTABILITY FOR EXPENDITURE OF CHILD SUPPORT PAYMENTS. The bill allows the court to order a custodial parent receiving child support payments to make an accounting of those payments, of the spending of those payments. While the proposed bill includes language that protects some custodial parents, such as domestic violence victims from the accounting responsibilities imposed by the bill, we remain concerned that some obligors will still be able to use the provisions of this bill to harass custodial parents.

As previously testimony has indicated, if the obligor is concerned that the custodial parent is neglecting the minor children for whom support is being paid, that concern should be reported to DCYS. If the obligor has the other financial concerns about their child's support payments in modification should be sought. This bill will create an unnecessary administrative burden for lack of another word on the custodial parent that very few frankly would be able to meet. We urge you to reject this bill. Thank you.

SEN. LOONEY: Thank you. Questions from members of the Committee. If not, thank you very much. Next is Raphael Podolsky to be followed by Sarah Wilson and then Marsha Taylor.

ATTY. RAPHAEL PODOLSKY: Thank you, Mr. Chairman. I've submitted. My name is Raphael Podolsky with the Legal Assistance Resource Center. I've submitted written testimony on five bills. I'm going to direct my testimony here to just one of them, but HB 6288 for the record on HB7321 and HB7322 which deal with the notice to quit, I urge you to reject those bills. HB5878, dealing with accounting for child support, I would also urge you to reject, and HB5937 dealing with condominium fees I would urge you to amend it so that to make sure the tenant does not get caught in a crossfire between the condo association and the unit owner.

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THOMAS WONTOREK: On this specific matter, yes.

REP. WOLLENBERG: And the Attorney General was involved and...

THOMAS WONTOREK: That's right.

REP. WOLLENBERG: ...was required to go back and forth to Stamford as well as attorneys for the town, attorneys for the community, and the people in the community.

THOMAS WONTOREK: The residents too, sure.

REP. WOLLENBERG: Were trucking down to Stamford on a daily basis for a while.

THOMAS WONTOREK: That's right.

REP. WOLLENBERG: Thank you. Not that they minded going to Stamford.

SEN. JEPSEN: It's a beautiful drive. They're just jealous. Further questions? Thank you.

THOMAS WONTOREK: Thank you.

SEN. JEPSEN: Lisa Sheehy to be followed by last name is Floral, first name is unreadable.

ATTY. LISA SHEEHY: Good evening Representative Tulisano and members of the committee. I'm going to maintain the change of gait from horses to landlord tenant issues. I'd like to go on the record for, first let me introduce myself -- Lisa Sheehy and I'm a housing attorney at the New Haven Legal Assistance Association.

I'd like to go on the record first in opposition to HB6288. But I'd like to address myself a little more extensively to HB7322, which hasn't been addressed this evening yet. And would also like to urge the committee to reject HB73222. That is the bill that would allow a combination of the State Notice to Quit, in summary process with a federal pretermination notice when the federal pretermination notice is required.

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And I'd like to urge rejection for three reasons. One is that although the bill proposes to state that a combined notice or simultaneous notices would not render the Notice to Quit the state one equivocal. In fact it doesn't do anything to eliminate equivocality. And such a combined or simultaneous notice would be.

Secondly, it would conflict with federal law as to a period for resolution of the dispute, and thirdly, the present system works quite well. First, in understanding why the simultaneous or combined notices are still equivocal, it's important to look at the purposes of each of the notices. The state Notice to Quit, those two things it gives an unequivocal notice to the tenant. It also terminates the lease, and under Connecticut Law, summary process, eviction action, cannot start until there has been an unequivocal termination of the lease, which is done by service of the notice to quit.

The lease terminates upon service. Some federal programs, housing programs, require that there be a pre-termination notice as well and the purpose of the pre-termination notice is quite different. The purpose of that is to provide notice to the tenant, but then to provide for a period of resolution, and for a process of resolution which is either a meeting or a grievance hearing, if it's a public housing authority tenant.

That is a pre-termination notice. It does not terminate the lease. It's clear that if a tenant receives something that purports both to be terminating the lease at the moment of service, and also to provide for a period of time to resolve the problem, that is, by its nature, equivocal. It's going to be confusing and it's equivocal.

The second reason is that there's a conflict with federal law. The federal regulations require there to be a pre-termination notice and a period of resolution. That cannot be accomplished if the termination has already occurred. There are some written comments that have been submitted to you, too, and I would cite you to the federal regulation

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section pertaining to public housing procedures that indicate that the termination cannot take place before the end of the resolution period.

What that means is that if a notice to quit, a state notice to quit is served along with the pre-termination notice, we can't do that under Connecticut law without conflicting with a federal regulation, because in Connecticut, unlike some states, our notice to quit terminates the lease upon service.

Thirdly, just to wrap up, the present system actually provides for a period of resolution that works a lot of the time, probably most of the time. Housing authorities and other landlords who are required to follow this procedure, very often enter into repayment agreements with their tenants during that time. That system is cheaper than litigation; it's less administratively burdensome; and it permits both of the parties to the contract to follow through on their contract.

Thank you. If I may answer any questions for you?

SEN. JEPSEN: Representative Radcliffe.

REP. RADCLIFFE: Thank you, Mr. Chairman. You indicated a conflict with the federal law.

ATTY. LISA SHEENY: Yes.

REP. RADCLIFFE: Did that have to do with the pre-termination hearing that's required by federal law?

ATTY. LISA SHEENY: Yes. There's a due process problem in that if you have a pre-termination period which is prior to termination and is for the purpose of resolution, then service of a simultaneous Notice to Quit that's already terminated the tenancy . . .

REP. RADCLIFFE: Is it necessary to serve the pre-termination notice through a sheriff or can that be served registered mail or sent through the mail?

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ATTY. LISA SHEENY: I'm not certain if there's a variation in the programs. I believe that it can be sent through the mail in all cases. It can in some.

REP. RADCLIFFE: Alright. So in a situation where pre-termination notice was sent through the mail and nothing occurred within the period, how long is the period of time for resolution?

ATTY. LISA SHEENY: That varies also by program. It's either 14 days in the case of public housing authorities with an informal conference, if requested by the tenant. In some other housing programs, it's ten days with an opportunity for a meeting with the owner.

I would also like to point out that it doesn't apply to section 8, certificates or vouchers. There is not requirement.

REP. RADCLIFFE: So this whole procedure we're talking about wouldn't apply to someone who was a section 8 tenant, and in that case, the service of the single notice to quit would be, would not cause that pre-termination problem.

ATTY. LISA SHEENY: That's right, because there's not a requirement beyond the state Notice to Quit in those cases.

REP. RADCLIFFE: Alright.

ATTY. LISA SHEENY: There are section 8 programs which are neither the certificate nor the voucher program that do require the pre-termination notice.

REP. RADCLIFFE: Do the section 8 programs require service of Notice to Quit under federal standards?

ATTY. LISA SHEENY: They require the pre-termination notice then they also require a Notice to Quit that the tenancy actually be terminated at some point. But generally what they do is refer to the requirements of state or local law.

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REP. RADCLIFFE: So, if I'm hearing you correctly, you could meet the due process requirement by mailing the initial pre-termination notice. If nothing were resolved within 14 days, then by serving a Notice to Quit under state law, which would at that point terminate the tenancy. Is that right?

ATTY. LISA SHEENY: That's right. Sequential notices would not be a problem. What's a problem is attempting both to terminate the tenancy with a notice which is also combined with an offer of resolution.

REP. RADCLIFFE: But one notice has to be, can be sent by mail and the other to terminate the tenancy by state law, would have to be served by a sheriff or another process server, constable.

ATTY. LISA SHEENY: The pre-termination notice, I believe, in all cases, can go by mail.

REP. RADCLIFFE: Alright.

ATTY. LISA SHEENY: I'm not certain if that does apply to all of the programs. I'd be surprised if it wasn't a consistent requirement, though.

REP. RADCLIFFE: Well, let's take a state notice. If the problem is the pre-termination notice, let's take a Notice to Quit that says that the tenancy is terminated, but that you have under federal law, a right to reinstitute the tenancy by following these particular procedures. Why can't that be served in one document? That seems to comply with the due process requirement and at the same time allow a landlord to do by state law what they can do right now, and that is to accept rent and having accepted rent, you waive the Notice to Quit.

ATTY. LISA SHEENY: I actually think, though, that, although I see where you're going with that, I think it doesn't actually comply with federal regulations, because the federal regulations say that what you need to provide is a pre-termination, not a reinstatement period, but a pre-termination resolution or cure period. And so I don't believe that the notice that you're laying out, hypothetically, would meet that requirement.

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REP. RADCLIFFE: I'm laying out the notice and saying that you put the date for vacating the premises far enough in advance, so that you have time for the 14 day period pre-termination.

ATTY. LISA SHEENY: I actually think that it needs to extend beyond that, although it is possible that if you have single notice, that provides for termination only upon expiration of the cure period provided under federal law, you could do that. I think that's the minimum that you would have to do.

But if I could just read to you, out of the regulations, the pertinent section. This is in public housing, the example comes from public housing tenancies where a hearing is required, of which notice has been given to the tenant and a pre-termination notice. "The tenancy shall not terminate even if any Notice to Vacate under state or local law has expired, until the time for the tenant to request a grievance hearing has expired, and if the hearing was timely requested by the tenant, the grievance hearing process has been completed."

So I think that the difficulty is that you . . .

REP. RADCLIFFE: Stop right there. That regulation that you read, seems to me, to presuppose that a state termination could take place in advance of this procedure.

ATTY. LISA SHEENY: No. In some states the Notice to Quit doesn't terminate the tenancy upon service (inaudible) to all of the states.

REP. RADCLIFFE: Alright.

ATTY. LISA SHEENY: Can I answer any other questions?

SEN. JEPSEN: Further questions?

ATTY. LISA SHEENY: If you permit me, I could address myself just a moment to HB6288, one particular point that was raised earlier.

SEN. JEPSEN: If it's very, very quick.

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H.B. 7322 -- Federal pre-termination notices  
Judiciary Committee Public Hearing  
April 15, 1993

Recommended Committee action: REJECTION OF THE BILL

Summary of bill: This bill provides that the combination of a federal termination notice with a state notice to quit does not make the notice to quit equivocal. Under well-established Connecticut law, a notice to quit, which is the document that ordinarily terminates a lease, must be unequivocal. The bill attempts to resolve an arguable conflict between two trial court decisions -- Fairway Gardens, Inc. v. May, NH-538, 2 Conn.L.Rptr. 715 (1990), and Intown Management Corp. v. Knowling, H-959, 5 Conn.L.Rptr. 89 (1991) -- as to whether a federal notice of a proposed termination (for which termination will not occur if the situation is resolved by a specified date) can be combined with a state notice to quit which terminates the lease immediately.

What the Committee should do: In fact, the two decisions are not in conflict. (a) The Committee should reject the bill. (b) If it does not reject the bill, then it should make clear that a notice to quit cannot be issued until the period for resolving the dispute has ended without a resolution (which would codify Fairway Gardens). See Version A on the reverse side of this page. (c) If it does neither, then it should make clear that a consolidated federal/state notice does not terminate the lease until after the end of the resolution period, not when delivered (which would codify Intown Management). See Version B. H.B. 7322 attempts to codify Intown Management but in fact omits a crucial part of that decision.

Explanation: In order to evict from federally-subsidized housing, the landlord must comply with both state and federal requirements. Federal law for some programs (primarily housing construction programs), requires a pre-termination notice, giving the tenant an opportunity to meet with management and to "cure" any non-payment before the lease can be terminated. The federal requirements vary from program to program, but they usually require a 10- or 14-day notice. In most programs, the opportunity for an informal meeting is sufficient, but in public housing the tenant has a right to a formal administrative hearing. These conferences or hearings can often prevent an eviction by working out a repayment agreement. In contrast, Connecticut requires use of an unequivocal notice to quit, which terminates the lease on the day it is delivered to the tenant.

Federal law permits the state and federal notices to be combined, but this creates a practical problem. How can you simultaneously give a pre-termination notice of a proposed termination and a termination notice of an immediate termination without the notices contradicting each other, confusing the tenant, and making the notice to quit equivocal? In Fairway Gardens, the

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court said that you can't, so that the notices must be sequential, i.e., the notice to quit can be served only if the dispute is not resolved within the curative period. In Intown Management, the court said that you can combine notices, but only if the notice to quit terminates the lease on its end date, rather than on the date of delivery, and if the tenant can cure during the intervening period (or else the notice would not comply with federal law). In other words, for a combined notice to satisfy federal law, the court had to reinterpret how a non-payment notice to quit operates under state law.

The logic of the federal right to cure makes sequential notices much more sensible. If a consolidated notice is nevertheless to be permitted, then the bill needs to make clear that there is a curative period and that the notice to quit does not terminate the lease until the end of the curative period.

-- Prepared by Raphael L. Podolsky

Version A

Substitute the following for l. 66-70:

THE NOTICE TO QUIT REQUIRED BY THIS SECTION MAY NOT BE ISSUED UNTIL THE END OF ANY NOTICE PERIOD REQUIRED BY FEDERAL LAW OR THE DATE OF COMPLETION OF THE PRETERMINATION PROCESS, WHICHEVER IS LATER.

Version B

Substitute the following for l. 66-70 (new language is underlined):

A TERMINATION NOTICE REQUIRED PURSUANT TO FEDERAL LAW AND REGULATIONS MAY BE INCLUDED IN OR COMBINED WITH THE NOTICE REQUIRED PURSUANT TO THIS SECTION, PROVIDED THAT THE RENTAL AGREEMENT SHALL NOT TERMINATE UNTIL AFTER THE DATE FOR VACATING CONTAINED IN THE NOTICE OR THE DATE OF COMPLETION OF THE PRETERMINATION PROCESS, WHICHEVER IS LATER, AND SUCH INCLUSION OR COMBINATION DOES NOT THEREBY RENDER THE NOTICE REQUIRED PURSUANT TO THIS SECTION EQUIVOCAL.

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H.B. 7322: Federal Pretermination Notices  
Judiciary Committee Public Hearing  
April 15, 1993

Recommended Committee Action: REJECTION OF THE BILL

The bill would permit a federal pretermination notice to be delivered to a tenant concurrently with the state notice to quit, without rendering the state notice to quit equivocal. In Connecticut, a notice to quit terminates the lease immediately upon delivery. In contrast, a federal pretermination notice by definition must be pretermination; it must be delivered before the lease has been terminated.

What the Committee should do:

- 1) The Committee should reject the bill.
- 2) If the Committee declines to reject the bill, it should require that the notice to quit be issued only after any resolution period provided in the federal pretermination notice has expired without a resolution being reached.
- 3) If the Committee declines both of these options, it should clarify that when a state notice to quit and federal pretermination notice are delivered concurrently, the lease may terminate only after the resolution period has ended.

Discussion:

Many federally subsidized housing projects require a pretermination notice before the landlord may evict. There are three kinds of pretermination notices, depending upon the type of subsidized housing. Two of these kinds of pretermination notices provide that the tenant can request a grievance hearing regarding the proposed termination, or that the tenant can request to meet with the owner regarding the proposed termination.

The purpose of each of these kinds of procedural provisions is to give the tenant and owner an opportunity to resolve the problem prior to any termination of the lease. A tenant cannot work out a proposed termination of the lease if the lease has already been terminated. E.g. Staten v. Housing Authority of City of Pittsburgh, 469 F. Supp. 1013 (W.D. Penn., 1979) (Held that federal law's requirement of a pretermination notice means that the state notice cannot be combined with the federal pretermination notice since the state notice terminates the

lease, whereas the federal notice gives the tenant an opportunity to resolve and avoid a proposed termination.)

Thus, the federal pretermination notice could be incorporated with the state notice to quit, only if the notice to quit did not terminate the lease upon delivery, but only at the quit date or after a final decision is made at the hearing or meeting, whichever is later. Only in that manner would the tenant's opportunity for resolution, mandated by federal law, be preserved.

Federal law requires the preservation of the resolution period prior to termination of the lease, even where it permits combined service of the federal pretermination notice and state or local notices to quit. For example, federal law requires a pretermination notice and the opportunity for a grievance hearing in terminations of public housing tenancies, but provides that, where such a hearing is required,

the tenancy shall not terminate (even if any notice to vacate under State or local law has expired) until the time for the tenant to request a grievance hearing has expired, and (if the hearing was timely requested by the tenant) the grievance hearing process has been completed.  
24 CFR 966.4(1)(3)(iv).

A combined federal pretermination notice and state notice to quit would introduce considerable confusion into the purpose and significance of each notice. This will be avoided if sequential delivery of the notices is required. However, in any event, combined notices cannot be permitted to terminate a lease prior to expiration of the resolution period required by federal law.

Testimony of Lisa Sheehy, New Haven Legal Assistance Association, Inc., 426 State Street, New Haven, CT 06510-2018.