

Legislative History for Connecticut Act

SB 1007 PA 238 1999

SENATE: 3603-3606, 4043-4047 9p.

HOUSE: 6765-6771, 7049-7053 12p.

Judiciary: 454-460 7p.

Total - 28 p.

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
1999

VOL. 42
PART 11
3511-3808

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Senate

Tuesday, June 8, 1999

THE CHAIR:

Thank you, Senator. One thing, before we begin with the Call of the Calendar, I will ask if there are any points of personal privilege or announcements? Seeing none, Mr. Clerk, would you begin with the Call of the Calendar?

THE CLERK:

Turning to Calendar page 1, Favorable Reports, Calendar No. 96. File No. 23. Substitute for SB1007, AN ACT CONCERNING VALIDATING PROVISIONS. Favorable Report of the Committee on Judiciary. Clerk is in possession of amendments.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Thank you, Madam President. I move adoption of the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

Question is on passage. Will you remark?

SEN. WILLIAMS:

Yes, thank you, Madam President. I would yield to Senator Crisco for the purpose of a strike-all amendment.

THE CHAIR:

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Senator Crisco, do you accept the yield? Before you do, sir, just a moment. Ladies and gentlemen, please. Senator Crisco, you have the floor.

SEN. CRISCO:

Thank you, Madam President, yes I do accept the yield. Madam President, I request that the Clerk call LCO-8019.

THE CLERK:

LCO-8019, which will be designated Senate Amendment Schedule A. It is offered by Senator Crisco of the 17th district.

THE CHAIR:

Senator Crisco.

SEN. CRISCO:

Yes, Madam President. Madam President, I move for adoption of the amendment and be given permission to summarize?

THE CHAIR:

Question is on adoption, please proceed.

SEN. CRISCO:

Yes, Madam President. Madam President, this is a very simple validating act, it admits the, takes care of the correction for admitting a proper notice in the paper for the City of Derby last year. And, Madam President, I just move its adoption.

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THE CHAIR:

Question is on adoption. Will you remark? Will you remark? If not, I will try your minds. All those in favor indicate by saying aye.

SENATORS:

Aye.

THE CHAIR:

Opposed nay? The aye's have it. Senate A is adopted. Will you remark further on the bill as amended? Senator Crisco.

SEN. CRISCO:

Yes, Madam President. It's self-explanatory. And may I request a roll call vote on this?

THE CHAIR:

A roll call vote will be ordered. Will you remark further on the bill? If not, would the Clerk please announce a roll call vote. The machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate.

Will all Senators please return to the Chamber.

Immediate roll call has been ordered in the Senate.

Will all Senators please return to the Chamber.

THE CHAIR:

Have all members voted? If all members have voted, the machine will be locked. Clerk, please announce the

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tally.

THE CLERK:

Motion is on passage of SB1007 as amended.

Total Number Voting 30

Those voting Yea 30

Those voting Nay 0

Those absent and not voting 6

THE CHAIR:

The bill is passed. Senator Jepsen.

SEN. JEPSEN:

Madam President, at this time I move for immediate transmittal of this item to the House of Representatives.

THE CHAIR:

Without objection, so ordered.

THE CLERK:

Calendar page 5, Calendar No. 548, File No. 260 and 775, Substitute for HB6620, AN ACT CONCERNING CONSUMER PROTECTION FOR NEW HOME CONSTRUCTION. As amended by House Amendment Schedule A. Favorable Report of Committees on General Law, Judiciary, and Finance Revenue and Bonding.

THE CHAIR:

Senator Colapietro.

SEN. COLAPIETRO:

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Senate

Wednesday, June 9, 1999

still waiting for.

It's a very brief Calendar. The Clerk could call.

THE CLERK:

Calling from Senate Agenda No. 4, Page 2,
Substitute for SB1007 An Act Concerning Validating
Provisions, as amended by Senate Amended Schedule "A"
and House Amendment Schedule "A". The House rejected
Senate Amendment Schedule "A". Favorable Report of the
Committee on Judiciary.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Thank you, Madam President. I move adoption of the
Joint Committee's Favorable Report and passage of the
bill.

THE CHAIR:

The question is on passage. Senator Crisco, for
what purpose do you rise, Sir?

SEN. WILLIAMS:

Thank you, Madam President. If I may, I would
yield to Senator Crisco.

THE CHAIR:

Please proceed.

SEN. CRISCO:

Thank you, Madam President. I accept the yield.

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Madam President, I move that House "A" be rejected.

THE CHAIR:

Motion is for rejection of House "A". Will you
remark?

SEN. CRISCO:

No, Madam President. Just basically we'll explain
as we call for another amendment.

THE CHAIR:

Mr. Clerk.

THE CLERK:

House Amendment Schedule "A" is LCO16036.

THE CHAIR:

Motion before us for rejection of House "A". Will
you remark further? Will you remark further? If not, I
will try your minds. All those in favor of rejection of
House "A" please indicate by saying "aye".

ASSEMBLY:

Aye.

THE CHAIR:

Opposed, "nay"? The ayes have it. House "A" is
rejected. Will you remark further on the bill? Senator
Crisco.

SEN. CRISCO:

Yes, Madam President. I request that the Clerk
call LCO9959. 9599. I'm sorry, Madam President.

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THE CLERK:

LC09599 which will be designated Senate Amendment
Schedule "B". It is offered by Senator Sullivan of the
5th District et al.

THE CHAIR:

Senator Crisco.

SEN. CRISCO:

Thank you, Madam President. Madam President, I
move for adoption of the amendment and be given
permission to summarize.

THE CHAIR:

The question is on adoption. Please proceed.

SEN. CRISCO:

Yes, Madam President. The basic difference between
the House Amendment "A" and LC09599 is basically is the
effective date and this will follow up on the law
revision recommendations.

It's a very good bill and should pass, Madam
President.

THE CHAIR:

The question is on passage, excuse me -- to the
members again, I apologize. I'm just waiting for the
information to be on the Calendar.

The motion before us is for adoption of Senate
Amendment "B". Will you remark further? Will you

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remark further? If not, all those in favor indicate by saying "aye"?

ASSEMBLY:

Aye.

THE CHAIR:

Opposed, "nay"? Ayes have it. Senate "B" is adopted. Will you remark further on the bill as amended? Senator Crisco.

SEN. CRISCO:

No, Madam President.

THE CHAIR:

The question is on passage of the bill. Will you remark further? If not, would the Clerk please announce a roll call vote. The machine will be opened.

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 ordered in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

Have all members voted? If all members have voted, the machine will be locked. The Clerk please announce the tally.

THE CLERK:

Motion is on passage of SB1007 as amended.

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Total number voting, 34; those voting yea, 34;
those voting nay, 0. Those absent and not voting, 2.

THE CHAIR:

The bill is passed.

SEN. JEPSEN:

Senator Jepsen.

SEN. JEPSEN:

I move for immediate transmittal of this item to
the House of Representatives.

THE CHAIR:

Without objection, so ordered.

THE CLERK:

Returning to Senate Agenda No. 4, Page 1,
Substitute for HB6843 An Act Concerning Admission to
State-Assisted Housing Projects. Favorable Report of
the Committee on Planning and Development. House passed
with House Amendment Schedule "A".

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

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:

The question is on passage in concurrence with the

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GEN. ASSEMBLY
HOUSE

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House of Representatives

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REP. GODFREY: (110th)

Thank you Mr. Speaker. Mr. Speaker I move for the suspension of our rules for the immediate consideration of Calendar 637, substitute for SB1007, AN ACT CONCERNING VALIDATING PROVISIONS. Which is on our Calendar but not double starred.

DEP. SPEAKER HYSLOP:

Seeing no objection the rules are suspended. Clerk please call Calendar 637.

CLERK:

On page sixteen. Calendar 637, substitute for SB1007, AN ACT CONCERNING VALIDATING PROVISIONS. As amended by Senate amendment schedule "A." Favorable report of the Committee on Judiciary.

DEP. SPEAKER HYSLOP:

Representative Doyle.

REP. DOYLE: (28th)

Thank you Mr. Speaker. I move acceptance of the Joint Committee's favorable report and passage of the bill in concurrence with the Senate.

DEP. SPEAKER HYSLOP:

Questions on acceptance and passage in concurrence with the Senate.

REP. DOYLE: (28th)

The Clerk has an amendment LCO 8019, previously

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designated Senate "A" may the Clerk please call and I be allowed to summarize?

DEP. SPEAKER HYSLOP:

Clerk please call LCO 8019, Senate amendment "A" and the Representative has asked leave to summarize.

CLERK:

LCO 8019, Senate "A" offered by Senator Crisco.

DEP. SPEAKER HYSLOP:

Representative Doyle.

REP. DOYLE: (28th)

Yes, thank you Mr. Speaker. I move rejection of Senate "A" and the basis for that is basically this strikes out the underlying bill. And we're going to, and this Senate "A" will be in the form of House "A" forthcoming. I move rejection of Senate "A."

DEP. SPEAKER HYSLOP:

The question before the Chamber is rejection of Senate amendment "A." Will you remark on the rejection of Senate amendment "A"? Will you remark? If not, we'll try your minds. All those in favor of rejection of Senate amendment "A" signify by saying aye.

REPRESENTATIVES:

Aye.

DEP. SPEAKER HYSLOP:

Those opposed? The ayes have it, Senate "A" is

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rejected. Will you remark on the bill? Representative Tonucci.

REP. TONUCCI: (104th)

Yes, Mr. Speaker, the Clerk has an amendment LCO 16036 would he please call and I be allowed to summarize?

DEP. SPEAKER HYSLOP:

Clerk please call LCO 16036, designated House "A."
The Representative has asked leave to summarize.

CLERK:

LCO 16036, House "A" offered by Representatives Farr, Tonucci, and Klarides.

DEP. SPEAKER HYSLOP:

Representative Tonucci.

REP. TONUCCI: (104th)

Thank you Mr. Speaker. Mr. Speaker, this is an amendment that affects the city of Derby. There was an oversight recently, and a notice wasn't filed. So all this does really is it validates some things that were done recently. Actually I'd just like to maybe mention a couple. One is the November 4, 1997 election, and the referendum would affect the revisions of the Charter if this were not passed.

This will also affect the appropriation of funds for the waste water treatment plant, and a sanitary

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sewer system, and all acts votes and receiving the board of aldermen and the officers and officials of the city of Derby on or after that date, November 4, 1997.

So again, Mr. Speaker, this will just make some changes, I move its adoption. /

DEP. SPEAKER HYSLOP:

Question is on adoption of House "A" will you remark on House "A"? Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, a question through you to the proponent of the amendment?

DEP. SPEAKER HYSLOP:

Please frame your question.

REP. TULISANO: (29th)

To Representative Doyle the proponent of the amendment?

DEP. SPEAKER HYSLOP:

Representative Tonucci is --

REP. TULISANO: (29th)

With regard to this appropriation of funds are there any outstanding claims, conditions, questions, pending or threatened as a result of the failure to publish appropriately, to your knowledge? Through you Mr. Speaker.

DEP. SPEAKER HYSLOP:

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Representative Tonucci.

REP. TONUCCI: (104th)

Mr. Speaker, no not to my knowledge. This was just an oversight that was done. It was something that, it was just, actually the city of Derby, it was an oversight and legal notice was not filed and it just really affects mostly the last election of November 4, 1997 and other technicalities. But no, to my knowledge it does not affect any law suits.

REP. TULISANO: (29th)

Through you Mr. Speaker, if in fact there is some challenge as a result of that, or has been threatened, that the gentleman is not aware of, is it our intent to cut off that right of an individual to pursue that particular cause of action? Through you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Representative Tonucci.

REP. TONUCCI: (104th)

Mr. Speaker, I would answer that by saying no. We are not trying to circumvent any law suits, it was just an oversight by the city of Derby and this would correct that.

DEP. SPEAKER HYSLOP:

Representative Tulisano.

REP. TULISANO: (29th)

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Thank you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Representative Klarides.

REP. KLARIDES: (114th)

Thank you Mr. Speaker. Mr. Speaker, I echo Representative Tonucci's comments on this. It was merely an oversight and there was no intent to circumvent the system in any way, for the election of municipal officers on November 4, 1997 which included a referenda, revisions to the Charter and appropriation of funds for the waste water treatment plant. And I urge my fellow colleagues to adopt this. Thank you.

DEP. SPEAKER HYSLOP:

Will you remark further on House "A"? Will you remark further on House "A"? If not, we'll try your minds. All those in favor signify by saying aye.

REPRESENTATIVES:

Aye.

DEP. SPEAKER HYSLOP:

Those opposed? The ayes have it, House "A" is adopted. 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, machine will be open.

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.

DEP. SPEAKER HYSLOP:

Have all members voted? If all members have voted
please check the machine to make sure that your vote is
properly recorded, the machine will be locked. Clerk
will take a tally. Representative Giannaros.

REP. GIANNAROS: (21st)

Mr. Speaker in the affirmative.

DEP. SPEAKER HYSLOP:

Representative Giannaros recorded in the
affirmative. The Clerk will announce the tally.

CLERK:

SB1007 as amended by House "A."

Total Number Voting	147
Necessary for Passage	74
Those voting Yea	147
Those voting Nay	0
Those absent and not voting	4

DEP. SPEAKER HYSLOP:

Bill as amended passes. Representative Godfrey.

REP. GODFREY: (110th)

Thank you Mr. Speaker. I move for the immediate
transmittal to the Senate of Calendar 637, substitute

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to be recorded? Representative Lawlor in the affirmative. The Clerk will please announce the tally.

CLERK:

HB6954 as amended by Senate "A" in concurrence with the Senate.

Total Number Voting	150
Necessary for Passage	76
Those voting Yea	139
Those voting Nay	11
Those absent and not voting	1

SPEAKER LYONS:

Bill as amended passed. Representative Godfrey.

REP. GODFREY: (110th)

Madam Speaker I move for the suspension of our rules for the immediate consideration of Calendar 637, substitute for SB1007, AN ACT CONCERNING VALIDATING PROVISIONS.

SPEAKER LYONS:

Hearing no objections the rules are suspended. Will the Clerk please call Calendar 637.

CLERK:

Calendar 637, substitute for SB1007, AN ACT CONCERNING VALIDATING PROVISIONS. Favorable report of the Committee on Judiciary.

SPEAKER LYONS:

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Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Madam Speaker. I move acceptance of the Joint Committee's favorable report and passage of the bill in concurrence with the Senate.

SPEAKER LYONS:

The question before the Chamber is on acceptance and passage, will you remark?

REP. LAWLOR: (99th)

Thank you Madam Speaker. This Chamber previously rejected Senate amendment "A". Madam Speaker the Clerk has LCO 16036, previously designated as House amendment "A" I'd ask that the Clerk call and I be permitted to summarize.

SPEAKER LYONS:

The Clerk has in his possession LCO 16036, previously designated House "A" will the Clerk please call the gentleman has asked leave to summarize.

CLERK:

LCO 16036, House "A" offered by Representatives
Farr and Tonucci.

SPEAKER LYONS:

Representative Lawlor what's your pleasure?

REP. LAWLOR: (99th)

Thank you Madam Speaker. I would urge rejection,

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the next amendment will take care of the problem.

SPEAKER LYONS:

The question before the Chamber is on rejection. The Question before the Chamber is on rejection, will you remark? Will you remark? If not, once again the question is rejection. Let me try your minds. All those in favor signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER LYONS:

Those opposed, nay. The ayes have it the amendment is rejected. Will you remark further? Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Madam Speaker. The Clerk has LCO 9599, I'd ask the Clerk call and I be permitted to summarize.

SPEAKER LYONS:

The Clerk has in his possession LCO 9599, designated Senate "B" will the Clerk please call, the gentleman has asked leave to summarize.

CLERK:

LCO 9599, Senate "B" offered by Senator Sullivan, et al.

SPEAKER LYONS:

Representative Lawlor.

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REP. LAWLOR: (99th)

Thank you Madam Speaker. I urge adoption, this changes the effective date.

SPEAKER LYONS:

The question before the Chamber is on adoption, will you remark? If not -- Representative Farr, I'm sorry sir.

REP. FARR: (19th)

Madam Speaker, we don't have copies, but I have reviewed it. It does in fact merely change the effective date. I urge passage.

SPEAKER LYONS:

Thank you sir for your indulgence. Will you remark? If not, we'll try your minds. All those in favor signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER LYONS:

Those opposed nay. The ayes have it the amendment is adopted. Will you remark further on the bill as amended? Will you remark further on the bill as amended? If not, staff and guests please come to the well, members take your seats, the machine will be open.

CLERK:

The House of Representatives is voting by roll call

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members to the Chamber. The House is voting by roll call, members to the Chamber please.

SPEAKER LYONS:

Have all the members voted? Have all the members voted? Will the members please check the board to make sure that your vote is accurately recorded. If all the members have voted the machine will be locked.

Representative DePino, and the Clerk will take the tally. Representative Merrill how would you like to be recorded? Representative Merrill in the affirmative. The Clerk will please announce the tally.

CLERK:

SB1007 as amended by Senate "B" in concurrence with the Senate.

Total Number Voting	149
Necessary for Passage	75
Those voting Yea	149
Those voting Nay	0
Those absent and not voting	2

SPEAKER LYONS:

Bill as amended passed. Representative Godfrey.

REP. GODFREY: (110th)

Thank you Madam Speaker. I move for the suspension of our rules for the immediate consideration of House Calendar 647, substitute for SB1330, AN ACT CONCERNING

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 2
391-734

1999

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To: The Honorable Co-Chairs and Members of the Judiciary Committee
From: L. Stewart Bohan
RE: Senate Bill 1006, An Act Validating Acts and Deeds
Senate Bill 1007, An Act Concerning Validating Provisions

I would like to be recorded in favor of the above bills which are the subject of a hearing before your Committee on Monday, February 8, 1999. Unfortunately, I cannot attend this hearing.

As you know, validating or curative acts have been approved by the Connecticut General Assembly for decades. These acts give legal effect to certain past acts or transactions and deeds which were initially ineffective because of failure to comply with some requirement of the law. The validating acts relate to formalities in judicial and statutory proceedings which are imposed by statutory law and to the validity and effect of deeds and other instruments of conveyance which are valid as between the parties but which are not entitled to be recorded, or if recorded do not give constructive notice to third parties because of some statutory irregularity. The Connecticut Supreme Court has recognized that the legislature may cure by such legislation the non-observance of any act which it has previously prescribed. *Browne v. Ide*, 109 Conn. 313 (1929).

A validating act may be specific as to a particular act or omission or a particular defective deed or other conveyance. However, it has been the custom of the Connecticut General Assembly to enact a general validation of acts and deeds, valid except for certain irregularities and omissions. The last such general validating act approved by the General Assembly was Special Act 97-6.

Traditionally, this type of general validating act has been approved by the legislature on a biennial basis in odd numbered years.

Senate Bill 1007 differs from the usual biennial validating act. Instead of validating certain acts of municipal agencies, assessors, tax collectors and probate courts which have occurred between the effective date of the most recent validating act and the effective date of the new validating act, and validating deeds and other instruments of conveyance first recorded within such period, Senate Bill 1007 validates *prospectively* the actions, decisions and orders of such agencies, officials and courts and validates such errors and omissions in deeds and conveyances as are described in the act by the passing of a stated time period after the date of the action, decision, order, or the recording of a deed or other instrument without the intervening challenge to the validity of any such action, decision, order or recording. The bill, if enacted, will remove the necessity for consideration and passage of validating acts such as Special Act 97-6 on a biennial basis.

Senate 1007 has been drafted and submitted to you for consideration by the Law Revision Commission. I was privileged to be a member of the Advisory Group which assisted the Commission's Study Committee on the validating acts. Other members of the Connecticut real

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property bar and representatives of title insurance underwriters in Connecticut also served in the same capacity.

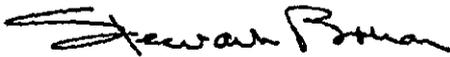
I believe that this is a good bill and deserves the joint favorable report of the Judiciary Committee.

Senate Bill 1006 is in many ways a parallel bill. It is the same bill that was enacted in 1997 as Special Act 97-6. I submit that this bill should also be passed by the General Assembly to avoid prolonging the period of validation of the actions and orders of boards and officials as described in the bill which have taken place since January 1, 1997 and to validate deeds and other conveyances that have been recorded since that date. If only this bill were enacted (and not Senate Bill 1007) all of the actions, orders, decision and instruments described in the bill would be validated as of January 1, 1999. If, however, only Senate Bill 1007 is enacted (and not Senate Bill 1006) all of these acts, orders, decision, deeds, etc. will not be validated until the periods of limitation as set forth in Senate Bill 1007 have expired. Obviously, if Senate Bill 1007 is adopted, it will not be necessary to enact a bill similar to Senate Bill 1006 any time after this year.

For the record, I am Chairman of the Board of Connecticut Attorneys Title Insurance Company and Chairman of the Standards of Title Committee of the Connecticut Bar Association. While I believe I am authorized to speak for both CATIC and the Standards of Title Committee with respect to these matters, the comments above are offered in my individual capacity.

My address is 255 Acorn Drive, Middletown, Connecticut 06457.

Sincerely,



L. Stewart Bohan

Date: February 8, 1999

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I. MILTON WIDEM, CHAIRMAN
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Connecticut General Assembly



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**Testimony of David L. Hemond
Chief Attorney, Connecticut Law Revision Commission**

to the Judiciary Committee

**concerning Senate Bill 1007
An Act Concerning Validating Provisions**

and

**Senate Bill 1006
An Act Concerning Validating Acts and Deeds,
Valid Except for Certain Irregularities and Omissions**

February 8, 1999

The Law Revision Commission recommends enactment in the 1999 legislative session of two proposed bills concerning the validating acts. In particular, enactment of Senate Bill 1007 would change the way in which Connecticut addresses instruments that contain unintended irregularities. The provisions of Senate Bill 1007 would be enacted as part of the General Statutes in lieu of the periodic adoption of a retroactively applied validating act. Senate Bill 1006 would enact, for the last time, the periodic form of validating act to avoid delaying the validation of errors committed since the adoption of the 1997 validating act. Adoption of Senate Bill 1007 would preclude the need to adopt such a periodic act in the future.

Last year, Judiciary Committee Co-Chairmen Donald E. Williams, Jr. and Michael P. Lawlor requested that the Law Revision Commission report to the Judiciary Committee by February 1, 1999 concerning the Validating Acts. The Commission recommendations are made in response to that request.

TestValid

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Brief history of the Connecticut Validating Acts

In legislative sessions prior to 1933, the General Assembly periodically passed a number of Special Acts each of which validated some specific action notwithstanding a failure to comply with a requirement of the General Statutes. Each of those Special Acts was directed to single instances, involving specific circumstances. Where an assessor in a particular town failed to file a timely assessment list, the assessment list was legislatively validated. A specific deed recorded with an improper acknowledgment was validated. When a fiduciary failed to give a required notice in a probate case, his subsequent actions were validated. During the 1933 legislative session, a decision was apparently made to pass a consolidated Special Act validating in general many of the typical failings that in prior years were validated individually.

The 1933 act, Special Act 33-453, An Act Validating Acts and Deeds Valid Except for Certain Irregularities and Omissions, is the prototype for later Connecticut validating acts. No legislative history is available for that act.

The general provisions of the 1933 act validated irregularities involving the duties of assessors, in the levying of taxes, in tax liens, in deeds conveying real property, and in actions by fiduciaries. Many of the provisions of the most recent 1997 Validating Act, Special Act 97-6, trace directly back to the general validating provisions of the 1933 prototype. The legislature continued to pass such a general validating act (referred to as the "Omnibus Validating Act" in many indices) every odd numbered year with occasional updates. (There is apparently no 1955 act. This also reflects either a historical or indexing anomaly with no particular importance for the current analysis.) The 1933 act also included a number of specific validations with respect to individual cases in the manner enacted in prior years. Such validations of individual cases continued in separate sections at the end of the validating acts through the enactment of the 1957 act, Special Act 57-678.

The validating acts have evolved through several phases. During the earliest period, 1933 to 1957, the acts followed the format of the 1933 act. The early 1960 acts continued the older form but added a number new provisions. In 1973, and in acts through 1983, language of this earlier period was significantly redrafted and reorganized. In 1985, the provisions were again significantly redrafted and additional subsectioning was added. The latest 1997 act follows the form of the 1985 act. Of course, discrete provisions were added or revised many times during these years. Despite all of these changes, the underlying premise of enacting a validating act does not appear to have been seriously reviewed or questioned since 1933.

Legal issues concerning validating acts

Legislative validating acts can be enacted to cure defects arising from a failure to comply with statutory requirements, provided that vested rights have not arisen in the interval between the failure to comply and the legislative validation. The basic rule is set out in *Sanger v. Bridgeport*, 124 Conn. 183 (1938), and *Dennen v. Searle*, 149 Conn. 126 (1961) as follows:

"What the Legislature may prescribe it may dispense with, and it may cure by subsequent act an irregularity of nonobservance of a requirement which it originally might have dispensed with, provided that vested rights have not intervened." *Sanger*, at 186.

For a general discussion of validating acts, see 16B *Am Jur 2d*, Constitutional Law, sections 690-706, and 23 *Am Jur 2d*, Deeds, section 191. The underlying consideration is that while a legislature may, within limits, legislate retroactively – determining the legal significance of acts or events that occurred prior to the statute's effective date, such provisions run the risk of denying parties who acted in reliance on the prior law of due process, or of depriving such a party of vested property rights obtained in reliance on the prior law. If the validation deprives a person of substantive rights based on prior law, the act may violate constitutional prohibitions concerning the deprivation of property without due process of law under the Fifth and Fourteenth Amendments to the United States Constitution. Thus while the various validating provisions are presumptively effective prospectively, their retroactive effect is in doubt where relied on to determine conflicting claims that arose prior to the validation.

Validating acts in Connecticut also run the risk of violating section 1 of Article First of the Connecticut Constitution, which prohibits public emoluments. The gist of that provision is that the legislature cannot enact provisions expressly for the benefit of private individuals. As the Connecticut Supreme Court noted in *Merly v. State*, 211 Conn. 199 (1989),

"We have construed the provision of article first, 1 prohibiting 'exclusive public emoluments or privileges' to apply to legislation preferring certain individuals over others when wholly unrelated to the public interest. 'No enactment creating a preference can withstand constitutional attack if the sole objective of the General Assembly is to grant personal gain or advantage to an individual. Its validity is contingent, at least in part, upon its furthering a public purpose; if sustained with that end in view, legislation can be sustained even though it may incidentally confer a direct benefit upon an individual or a class.' *State ex rel. Higgins v. Civil Service commission*, 139 Conn. 102, 106, 90 A.2d 862 (1952)..."

The Connecticut practice, particularly through the 1957 act, of validating individual defects, has the appearance of awarding emoluments in violation of that policy. Any such individual validations do not apply to all individuals affected by a like defect and therefore give preference to the individual benefiting from the validation. While some public purpose might be found in those cases to sustain particular awards, any such act is inherently suspect. However, by resorting in 1933 to adoption of general validating provisions for many defects, the legislature skirted the problems with emoluments for those provisions. Any such general validating act applies generally to the class of all persons subject to the particular defect validated. As long as the class of application is large enough and the public purpose is evident, such a provision should survive an emolument challenge. However, some of the general validations may be so tightly drawn as to address a discrete, relatively unique circumstance and benefit a limited class. Such a general provision that, in fact, benefits only a specific person or limited class might violate the emolument prohibition if no "public" purpose can be ascertained. That problem is a particular danger if a retroactive validation is passed that is intended to resolve some specific case since the legislature is, in fact, acting to benefit specific individuals affected by that specific defect.

The periodic use of validating acts also creates other problems. Some of the errors that are validated in the Connecticut act are not so serious that the underlying transaction should be voidable based on the error. Where that is the case, the defect is insubstantial and would be more properly addressed by a provision in the General Statutes that indicates that such an error is of no effect. The Connecticut practice of validating such errors runs the risk that a new occurrence of the error will be considered to be substantive and will become the basis of litigation in the interval before a new validating act is passed.

Moreover, if a failure to comply with a statute is substantive and ought to give a party rights to contest the transaction, the periodic enactment of a validating provision runs the risk of prematurely terminating (or attempting to terminate) that right to contest. Connecticut addresses this problem by providing that the act has no effect if litigation is pending. See section 9 of the 1997 act. However, the party holding such a substantive right to contest a transaction based on an error or defect may be unaware that his right is about to be foreclosed by the validating act or may be unable to litigate promptly for other reasons. The legislature's notice of public hearing on the proposed validating act does not reasonably apprise such a party that his right to litigate is about to be foreclosed. Moreover, if the error occurred shortly before passage of the retroactive validating act, there may be little or no opportunity for an injured party to seek redress. Thus the impact of the retroactive validating act with respect to persons holding such rights is potentially arbitrary.

Validating acts, then, face problems with their retroactive application, with the danger that they will be construed to be emoluments benefiting individuals rather than the public, with the fact that they cast doubt on insubstantial errors, and because they may arbitrarily foreclose rights of parties holding substantive rights based on the defect that is validated. Because of these problems, the Law Revision Commission recommends that the legislature revise its approach to avoid the need in the future for retroactive validations.

The Law Revision Commission finds that specific errors that are currently addressed by the periodic validating act, where necessary, should be addressed in advance by provisions of general application. Enactment of Senate Bill 1007 would obviate the need for the continued passage of the period act by validating such errors after passage of a period of limitations. That approach ensures that persons holding substantive rights as the result of a defect or omission are afforded ample opportunity to litigate those rights, but that the errors do not create a cloud on title or interests for later generations.

However, switching to this prospective approach will result in an additional two year hiatus until current defects, some of which have been of record for two years already, are validated. Because Connecticut policy for over sixty-five years has been to validate errors within two years, the legislature also needs to enact, for a last time, a retroactively applied validating act so that no additional delay occurs for errors committed between enactment of the 1997 act and the effective date of the new prospective act. For that reason, the Commission recommends simultaneous enactment of both Senate Bill 1007 - the new act which will operate prospectively - and Senate Bill 1006 - the old act, to validate existing errors of record.

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A more extensive report on the validating acts has previously been submitted to the Judiciary Committee and is on file with the Law Revision Commission. If you have any questions, please call David Hemond at 240-0220.