

Legislative History for Connecticut Act

**Act Number:** PA 06-89

**Bill Number:** 5447

**Senate Pages:** Senate: 2793, 2914-2915

3

**House Pages:** House: 2646-2683

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**Committee:** Environment: 608-617, 643, 644-645, 650-654,  
730, 731-732, 733-736, 744-752, 759-760, 781-  
782, 783-785, 821-823, 840, 990, 992-993, 994-  
999, 1000, 1001-1002, 1008-1009, 1019-1025,  
(1026-1035), 1038-1039

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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate  
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CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS

2006

VOL. 49  
PART 9  
2616-2934

kmm  
Senate

002793  
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May 1, 2006

Calendar 452, PR.

Calendar 453, marked Go.

Calendar Page 7, Calendar 454, marked Go.

Calendar 455, PR.

Calendar 456, House Bill 5051, Mr. President, I  
would move to place this item on the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. LOONEY:

Thank you, Mr. President. Calendar 457, Pass  
Temporarily.

Calendar 458, House Bill 5668, Mr. President, I  
would move to place this item on the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. LOONEY:

Thank you, Mr. President. Calendar 460, House  
Bill 5447, I would move to place this item on the  
Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. LOONEY:

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Calendar Page 6, Calendar 428, Substitute for  
House Bill 5478.

Calendar Page 7, Calendar 456, Substitute for  
House Bill 5051.

Calendar 458, House Bill 5668.

Calendar 460, Substitute for House Bill 5447.

Calendar Page 8, Calendar 461, Substitute for  
House Bill 5787.

Calendar 462, House Bill 5461.

Calendar Page 9, Calendar 475, House Bill 5720.

Calendar Page 10, Calendar 481, Substitute for  
House Bill 5707.

Calendar 482, Substitute for House Bill 5795.

Calendar 483, Substitute for House Bill 5819.

Calendar 484, Substitute for House Bill 5289.

Calendar Page 20, Calendar 418, Substitute for  
Senate Bill 602.

Calendar Page 21, Calendar 424, Substitute for  
House Bill 5529.

Calendar Page 22, Calendar 478, House Bill 5844.

Mr. President, I believe that completes the items  
placed on the first Consent Calendar.

THE CHAIR:

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Mr. Clerk, would you announce a roll call vote on the Consent Calendar. The machine is open.

THE CLERK:

The Senate is now voting by roll call on the Consent Calendar. Will all Senators please return to the Chamber.

The Senate is now voting by roll call on the Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Have all Members voted? Senator Murphy. Senator Murphy. If all Members have voted, the machine is closed. Clerk will please announce the result of the roll call vote.

THE CLERK:

The motion is on adoption of Consent Calendar No. 1.

Total number voting 36; necessary for passage, 19. Those voting "yea", 36; those voting "nay", 0. Those absent and not voting, 0.

THE CHAIR:

All items on the Consent Calendar are passed.

Mr. Majority Leader.

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Also on Page 24, Calendar Number 356, Substitute for House Bill Number 5470, AN ACT ESTABLISHING A DRINKING WATER QUALITY MANAGEMENT PLAN FOR THE TOWN OF GROTON, Favorable Report of the Committee on Environment.

SPEAKER AMANN:

Representative Mantilla.

REP. MANTILLA: (4<sup>th</sup>)

Mr. Speaker, I move this item be referred to the Committee on Energy and Technology.

SPEAKER AMANN:

Thank you, Madam. Is there objection? Is there objection? Hearing none, so ordered. The Clerk, please call Calendar Number 135.

CLERK:

On Page 18, Calendar Number 135, Substitute for House Bill Number 5447, AN ACT CONCERNING ENCROACHMENT ON OPEN SPACE LANDS, Favorable Report of the Committee on Planning and Development.

SPEAKER AMANN:

Representative Willis.

REP. WILLIS: (64<sup>th</sup>)

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Thank you. Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the Bill.

SPEAKER AMANN:

Question is acceptance of the Joint Committee's Favorable Report and passage of the Bill.

Representative Willis, you have the floor, Madam.

REP. WILLIS: (64<sup>th</sup>)

Thank you very much, Sir. The Bill before us concerns encroachment on open space lands. This Bill has come before us in response to our Council on Environmental Quality's report titled Preserved but not Protected.

And, in addition, a recent 2005 Supreme Court, State Supreme Court decision on an East Haddam case involving the cutting of 340 trees on land trust land encouraged the Legislature to reexamine this issue of land encroachment on preserved and protected open space, particularly in light of the Court's inability to really effectively provide an adequate remedy.

The laws pertaining to tree-cutting in Connecticut are a little outdated, woefully outdated, we might say. The first time they were adopted was

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1726, when the theft of trees was, was certainly an issue because of the commodity of wood.

And we apparently haven't done much to update that since then. Now, the problem is more likely to be the removal of trees to enhance someone's view in a development, really involving beyond just taking wood for logs and timber.

The penalties, if excess, are really minor in relation to the home's value and are really of no, have no deterrent for people to take those kinds of actions.

Meanwhile, the true value of the trees on preserved lands, which are valuable to us because they add to our scenery, they're recreation, they're home to wildlife and other public purposes are not recognized in law at all.

The problem that the Bill attempts to address is to correct that existing laws provide really no deterrent to those who want to violate the preserved, the boundaries of preserved open space.

There are numerous examples of encroachment across the state on protected open lands belonging to nonprofit land trusts, towns and the state.

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And I wanted to go through so you can get an idea the extent to this problem and what some of the things that have been going on in Connecticut which, I must say, after I read the report and some of the materials that were provided to me, were alarming and felt there ought to be a law protecting our preserved lands.

In 2005, in fact, this December, 2005, the land trusts were surveyed statewide on what the extent of the encroachments are. They contacted 96 of the 116 land trusts and similar organizations, a total of 78 responses.

And these, these are some of the examples of the kinds of encroachments that are going on. The most prevalent, obviously, is the tree-cutting, and then we have road building. We have parking lots built. We have a house built. We have six sheds. We have several swimming pools.

We have several garages, fences, a hockey rink, terraces, decks. Pumping of ponds took place, theft of stone walls, six of those. The list goes on and on, all of this on land that has been protected by the State of Connecticut or by land trusts across the state.

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In the Supreme Court decision, they affirmed that, under current law, there are really only three possible measures for damage loss of trees in Connecticut.

One right now is the unlawful entry on the property, which would be a nominal fine. The second would be the value of the trees, which is considered separately from land and is really only the board feet or what the value is for the lumber or firewood.

And the third I think the Court really came down and said is the value or the effect on the value of the land. And, in the case of preserved land that cannot be sold, again, that would be very nominal.

None of these methods seem appropriate to the cases on preserved land because the value, as I said, of the wood is pretty insignificant.

What this Bill attempts to do is define open space and encroachment and authorizes the Attorney General to bring suit if they decide against a violator in Superior Court on behalf of the land trust.

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The Court also shall be ordered that the land should be restored to its prior condition and the costs of restoration also be included.

This is very important to mention here in terms of legislative intent because restoration means the replanting of the trees with species that are appropriate, native to the ecosystem it came from.

It also means that, if someone took down 200-year-old trees, obviously we can't expect that 200-year-old trees would be replanted.

But we would expect that mature trees would be put there in their stead, not seedlings and not any plantings that would not be normally found in that area. The Court may award five times the cost of restoration, up to \$5,000.

And, in determining the award, the Court can take into consideration the willfulness of the violation, the extent of the damages to the natural resources, the appraised value of the trees or other shrubs that were damaged and the economic gain of the violator that he may or she may have realized by taking such action.

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These lands are held in the public trust to benefit all of us. They are preserved and they are protected.

These lands have been donated or funds have been raised by our communities or our state has used taxpayers' monies to purchase these properties and to ensure that they are permanently protected as open space.

I want to thank all those who worked on this Bill, a special thanks to our former Deputy Commissioner, David Leff, who, this is probably one of the last things that he worked on before he retired.

And he felt quite passionately about us needing to go ahead with this, so I thank him for these efforts. And, again, my thanks to the Council on Environmental Quality and Carl Wagner for his efforts and particularly about bringing this issue before us. So I thank you, Mr. Speaker.

SPEAKER AMANN:

Thank you, Madam. Care to remark further on the Bill? Care to remark further? Representative Chapin.

REP. CHAPIN: (67<sup>th</sup>)

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Thank you, Mr. Speaker. I also rise in support of this Bill. I did have some questions but the proponent was very thorough in her explanation. I do believe it's a good Bill and it's, as she stated, the Statutes that are current to today are woefully inadequate in assessing these types of penalties.

And I think this will go a long way to discourage this type of existing activity. I encourage my colleagues to support it. Thank you, Mr. Speaker.

SPEAKER AMANN:

Thank you, Sir. Care to remark further?  
Representative Giannaros.

REP. GIANNAROS: (21<sup>st</sup>)

Thank you, Mr. Speaker. I rise also in support of this particular Bill. It is something that is very much needed. What exists currently in law does not address the problems that we have faced with relation to land trusts and organizations that keep land open for future generations and for environmental purposes.

In my particular case, I, not only am I a member of the Farmington Land Trust, but I got involved on this issue a couple of years ago, when we discovered that the Carey Pasture, which is under the protection

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of the Farmington Land Trust, was violated by a construction company that decided on their own without any notification.

And, while the land was clearly marked by both the town and the Land Trust, they decided to go into the Land Trust land, in some respect rape the land because they cut down 150-year-old trees that were not only beautiful for our environment and enjoyment but also were protecting the soil, the habitats and were actually preventing erosion because the trees were cut along the hill that the construction was taking place.

This particular event got me involved in not only visiting with the, the Council on Environmental Quality and discussing with them what we may need to do but, after numerous meetings, we requested from the Farmington Land Trust to have the Attorney General and/or the State Attorney's Office get involved so that we can be at least remunerated to recover the land and bring it back to where it was.

Of course, you can never completely recover because 150-year-old trees were no longer in place. What we found out in our, and discussed, actually, that what we could claim as damage was only the value

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of the trees as wood and not for the environmental beauty and quality and age that they were offering to our community.

And then, through efforts of Dr. Leets who, he is on the board, member of the Farmington Land Trust, and the president, John Vibert, a survey was done.

And the survey resulted in discovering that practically all the land trusts get violations of this type, as was mentioned by the Chairwoman of the Higher Education Committee who brings out the Bill today, Representative Willis.

Out of 78 land trusts that responded to the survey, if I recall correctly, 65 of them had significant violations on their lands with relation to encroachment. And one can see why the law has to be corrected so that, for prevention purposes more than anything else.

People who are intending to violate other people's property rights and, in this case, the property rights of all of us because it's community-held open space lands, that they would have to think twice about it because there would be legal ramifications.

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And I fully support the language that we have before us in this particular Bill. I think it will address the problem, both from a preventive point of view, preventative point of view, but also in terms of having those that violate land trusts, lands that are entrusted to be preserved for the future generations and for environmental quality to be left alone for the purpose that they were acquired. Mr. Speaker, I ask all of my colleagues to support this Bill. Thank you for your indulgence.

SPEAKER AMANN:

Care to remark further? Care to remark further?  
Representative Ward.

REP. WARD: (86<sup>th</sup>)

Thank you, Mr. Speaker. I, too, agree that this Bill is a good Bill, that it makes sense that the current penalties that exist for encroaching on open space land don't relate to the potential harm done by that encroachment. I do, however, have a couple of questions to be sure I know how this will work.

SPEAKER AMANN:

Please frame your questions, Sir. Please frame your questions.

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REP. WARD: (86<sup>th</sup>)

Through you, Mr. Speaker. Representative Willis, the effective date of Section 1 of this Bill and I guess of Section 2 of October 1, '06. Let's assume in a hypothetical that someone encroached two years ago.

And let's assume it was accidental, surveyor made a mistake or they didn't have a proper survey and a child's play toy was erected four feet into what was marked on the subdivision map as open space with an easement to the municipality, so it's in the Section 1 of the Bill.

But that occurred two years ago, are they subject to the new penalties or would they be subject to the penalties that existed prior to October 1, '06?

SPEAKER AMANN:

I'm sorry, Sir. Representative Willis.

REP. WILLIS: (64<sup>th</sup>)

Yes. Thank you. Through you, Mr. Speaker. I'm not sure how to answer you, Representative Ward, because it depends when it was discovered and how. I think this would have to be a case-by-case basis in terms of how the courts looked at it if someone was to bring an action.

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I mean, you didn't indicate, the question didn't indicate if, if this, the complaint had been made prior to or discovered after October of 2006.

SPEAKER AMANN:

Representative Ward.

REP. WARD: (86<sup>th</sup>)

Thank you, Mr. Speaker. I guess in my hypothetical it didn't matter. What I'm saying is the encroachment occurred prior to October 1, '06. Whether someone complained about it or not shouldn't matter. I don't mean a case that's over.

Obviously, if a case is over, it's not going to get retried. That's settled. But let's assume that, again, a homeowner encroached. And I'm going to, for the purpose of the hypothetical, that it's in good faith.

As I understand it in terms of the new requirement that you pay a restoration cost, whether it was accidental or not doesn't matter. It's only the five times penalty.

Am I correct, through you, Mr. Speaker, that the enhanced penalty of five times the cost of replacing the tree, the court can consider whether it was

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intentional or accidental, but for the new definition that, what the value of a tree is, for example, that doesn't matter whether it was accidental or intentional? Through you, Mr. Speaker.

SPEAKER AMANN:

Representative Willis.

REP. WILLIS: (64<sup>th</sup>)

That's true in terms of the penalties. It wouldn't matter. It's just if the court wants to impose additional penalties based on willfulness or the egregious nature of the act.

I, you know, in talking to DEP about some of the cases before them, they really said to me, you know, we look at all of these cases individually, case by case on how they handle them, how they assess them, whether it's a fuzzy border or whether it's a clearly defined border because there are some areas in the state where state property hasn't been surveyed in a number of years.

So the only thing I can say is I would assume that it would be looked at after 2006 in weighing those terms.

SPEAKER AMANN:

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Representative Ward.

REP. WARD: (86<sup>th</sup>)

Again, thank you, Representative, for her explanation. Let me just say that I hope that a court would interpret it that way.

The law has been clear for probably a couple hundred years in Connecticut that if you remove a tree from a neighbor's property or that's in open space, the penalty is really the value of the wood either as lumber or as firewood.

That should be changed, because people don't think of the trees on their land or in the open space land in that way anymore.

But we also know if five or six or eight or nine or ten years ago, people didn't pay as much attention perhaps to going a couple of feet into something marked on the subdivision map as open area.

And I suspect there are subdivisions throughout this state where homeowners without thinking much about it, some probably thought about it, some probably didn't, and the kids' swimming pool encroached a couple of feet and they took those down.

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Or they created a little more room for a soccer net or something of that sort which they shouldn't have done. But there wasn't much in the way of penalties or enforcement.

And I hope that when we very substantially, understand that with this standard, and although I have not reviewed the guide for plant appraisal, I'm assuming that what would have been literally pennies or dollars of compensations you were required to pay might be tens of thousands of dollars today.

And it would seem to me that the public ought to have notice that the potential damages are very substantial. And that should apply to encroachments that occurred after the effective date of the Act, not encroachments prior to the effective date of the Act, even if nobody complained.

And I also think a lot of people may have made these encroachments negligently or accidentally, not intentionally. Obviously, the situation that one of the prior Representatives talked about where somebody clear cut 150 trees clearly in open space land, I view that a little differently.

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It was clearly marked, they cleared 150 trees. Personally, I would view that differently than the homeowner that thought it was okay to get a little bit into an encroachment area, whether that was expanding their lawn a little bit, whether it was putting the kids' plaything or something of that up.

I don't think it's appropriate. They shouldn't do that. But also, oftentimes even today in many places, subdivision boundary markers aren't so clear. And with angles and turns in the things, you may think your property's in one place but it's really somewhere else.

So I would hope that this would be interpreted in that way. It would also indicate that it says that no person may encroach or cause another person to encroach. And, again, through you, Mr. Speaker, just a hypothetical question to the proponent of the Bill.

SPEAKER AMANN:

Yes, Sir. You may frame your question.

REP. WARD: (86<sup>th</sup>)

Thank you. Let's assume that a homeowner who abuts open space properly marked as open space hires a swimming pool contractor to install that swimming

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pool. The homeowner pulls the proper permit and asks the contractor to comply.

The contractor in fact encroaches eight or ten feet. The homeowner didn't request them to put it in that location, just hired them to put in the pool. Is both the homeowner and the contractor liable for the damages? Through you, Mr. Speaker.

REP. WILLIS: (64<sup>th</sup>)

Through you, Mr. Speaker. Sounds like an insurance question. My, again, going back to the information that was given to me from DEP, that they would look at these on an individual basis.

The fact is that the swimming pool example that you gave is, is pretty, I don't want to say common but not uncommon to the Agency. And they would have to, because I asked, you know, would you talk about monetary versus removal?

And monetary would not be much in a case like that because the value of the land is nominal because it's preserved or open space. It's not like market value of a property. So it's a diminished value.

DEP feels that it's very important to ensure that we set a precedent by making a very strong statement

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that that pool, if it's built on state lands, is going to have to come out.

SPEAKER AMANN:

Representative Ward.

REP. WARD: (86<sup>th</sup>)

Again, I appreciate the answer. And I just think it's important that folks know that this is intended to apply retroactively so that, while I support.

SPEAKER AMANN:

Could you, could you, I'm sorry. Could you let the gentleman finish his question? Representative, I'd appreciate it. Representative Ward.

REP. WARD: (86<sup>th</sup>)

Perhaps I was mischaracterizing something, so I'll make it a question because I've just, is this intended to apply retroactively to someone who may have already encroached prior to this point in time? Through you, Mr. Speaker.

SPEAKER AMANN:

Thank you, Sir. Representative Willis.

REP. WILLIS: (64<sup>th</sup>)

Through you, Mr. Speaker. First of all, I did want to, I wasn't very clear on your question before

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about how would be liable. And I think that really is going to be up to the courts to decide whether, whether or not it was the builder, the contractor or the homeowner and whether or not it was a willful act.

So I did want to put some closure on that. The second part is, your second question, could you reframe it for me?

SPEAKER AMANN:

Representative Ward, if you would do that, Sir.

REP. WARD: (86<sup>th</sup>)

Sure. The second part of the question is whether it was intended to apply retroactively. Through you, Mr. Speaker.

SPEAKER AMANN:

Representative Willis.

REP. WILLIS: (64<sup>th</sup>)

My understanding of this would be that some of these encroachments could have taken place before 2000, October, 2006. They may not be discovered until 2007 or 2008. And I think then it would be up to the property owner to make a case for themselves that this was done prior to the enactment.

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But I am convinced that, as we go out and land trusts and the state go out and identify boundaries, we may find more and more of these cases that may have occurred prior to October, 2006.

REP. WARD: (86<sup>th</sup>)

Again, Mr. Speaker, thank you. I certainly agree. In fact, obviously the reports show there were lots of encroachments. We're not yet at October 1, 2006, so they all occurred up to this point, prior to that time.

And I was just trying to get a handle on what the intent is. Certainly, I think the homeowner, we need to be clear, is kind of always liable under this situation.

They may also be able to sue somebody else if they did it, but they say that any owner of the space is subject to these damages.

They may be able to argue there shouldn't be willful penalties because, unless there was some proof that the homeowner instructed the contractor to violate the boundary line. I don't think the court would find, when we say five times, those are punitive damages. That's a penalty.

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I think that would require some willfulness. And I think the owner of the area that was encroached upon, unless it has ripened into adverse possession, which is ordinarily not available against either the state or municipalities, I don't know if it's available against a land trust.

I suspect it may be, but I'm not certain of that. There's always the right to make somebody remove an encroachment that's there. The real question is, in addition to removal, the restoration and the restoration costs.

And, as I say, I do think the Bill goes in the right direction. I'm just a little worried about enhanced penalties for things that happened before the law changed.

Also, the Chairman correctly pointed out that DEP may have some discretion in this. This clearly goes much farther than DEP, though.

Every municipality, as I view this, that in the subdivision approval had something listed as a conservation easement in favor of the municipality would also be governed by this. Or, if it was granted

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to a land trust, I think there will be some technical legal issues to sort out.

There are a lot of subdivision maps that say conservation easement area but nobody ever drafts an actual easement document, and that's happened more in the past, and recorded that on the land records or said who the easement was in favor of.

And I'm not sure who would enforce those but, again, these are new and enhanced penalties. And, as many of our bills, they may need time to work through. We may need to adjust them in the future. But I do support the enhanced penalties.

It's a little unusual that we set a price and say that the courts have to base it on one person's book. I suspect that was found at this point to be the only authoritative or semi-authoritative source on the subject. I think that's fine for now.

I think perhaps we should revisit that at some point. We should give courts the power to find a value and have that value include restoration value or a value other than firewood. I'm not really sure we should be adopting one individual's book published in one place.

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And then the courts have to look it up on that book and that's the answer of value. That's not generally a good way to approach damages. But perhaps, and I'm not an expert on this, that was the most authoritative book at the time. Thank you, Mr. Speaker.

SPEAKER AMANN:

Representative Willis.

REP. WILLIS: (64<sup>th</sup>)

Thank you. I was waiting to see. The reason the book was put in there, the book value, is that's consistent with existing statutes for tree wardens. Thank you.

SPEAKER AMANN:

Question is on adoption. Care to remark further on the Bill? Representative, Representative Roy.

REP. ROY: (119<sup>th</sup>)

Thank you, Mr. Speaker. Mr. Speaker, I just wish to rise publicly and thank Representative Willis for taking on this project. When we spoke on this issue at the beginning of Session, I asked if she would spearhead.

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She did so and she did so with a great ability and perseverance. I just want to say thank you, Representative Willis. I appreciate your good work.

SPEAKER AMANN:

Representative Miller.

REP> MILLER: (122<sup>nd</sup>)

Thank you, Mr. Speaker. Just by way of comment, in my district it has to do with a state property, not a land trust. A developer took down about 200 feet of trees along the Housatonic River.

And there's a dispute going on now about three months where the developer claims that he sent a guy down there to get rid of scrub trees and bushes and so forth.

And when the town went there to check out what type of trees they were, they were 20 inches in diameter. So they weren't scrub trees. So this thing has gone on for three months.

The fact that this is on a slope alongside the Housatonic River, I often think that if these, the ability of the root system to provide a steady base for the soils, when these roots start to rot away and

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the soil starts to dump into the Housatonic River,  
that's going to be a heck of an expense to repair.

Because they're not going to be able to do it  
from the land side, they would have to go into the  
river with equipment to repair it.

So I'm not sure that there's going to be enough  
money, you know, if this Bill were in place at the  
time, whether there would be enough money to repair  
that particular situation where maybe 100 feet of soil  
along the riverbank now slides into the river.

If you'd like to comment on that, I'd like to  
listen to your answer. If not, that's okay too.  
Thank you, Mr. Speaker.

SPEAKER AMANN:

Thank you. Representative Willis, would you like  
to respond to that?

REP. WILLIS: (64<sup>th</sup>)

Sorry, I'm sorry. I was answering another  
question. I apologize.

SPEAKER AMANN:

Representative Miller, would you like to phrase  
your question, Sir?

REP. WILLIS: (64<sup>th</sup>)

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I got most of your comments, I just didn't hear the question.

SPEAKER AMANN:

Okay, would you like to ask that question, Representative Miller?

REP. MILLER: (122<sup>nd</sup>)

Sure, yes. Thank you, Mr. Speaker. I don't know if you heard all that I have to say, but it's a bank along the Housatonic River, 200 feet, some trees were taken down.

As the root system deteriorates and the bank doesn't have that holding capacity of those root system and that bank goes into the Housatonic River, the repair job would have to be done from the Housatonic River, not from the land side.

This is a sloping parcel of land and not a very wide parcel of land. So I just wondered if there's enough fines in this particular Bill to cover the very large expense of repairing that particular bank.

Through you, Mr. Speaker.

SPEAKER AMANN:

Representative Willis.

REP. WILLIS: (64<sup>th</sup>)

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I certainly, thank you. Through you, Mr. Speaker. I can't answer the question of what the cost of restoration of what a bank like that, soil and erosion and sediment control is obviously, as you said, a very costly item.

The Bill does cover and ask the courts to look at the costs of restoration because a lot of times it is damage to the land. As you mentioned before, sometimes it's scrub, you know, and it's not valuable trees that have necessarily been taken but damage, actually, to the land.

Obviously, it would be up to the courts to, again, consider the willfulness, egregious nature of the act and try to get as much damages as they can to get the property back to where it was once. Thank you.

REP. MILLER: (122<sup>nd</sup>)

Thank you.

SPEAKER AMANN:

Representative Miller. Thank you, Sir. Care to remark further? Representative Mazurek.

REP. MAZUREK: (80<sup>th</sup>)

Thank you, Mr. Speaker. Good afternoon to you,

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Sir. Representative, a question for Representative Willis, if I may, Sir.

SPEAKER AMANN:

Please frame your question.

REP. MAZUREK: (80<sup>th</sup>)

Thank you. Representative Willis, I see that we have an effective date of October 1st, 2006 on here. I think perhaps that Representative Ward asked you the question and I was distracted during your answer.

If trees were cut prior to the effective date, October 1st, 2006, would they in effect and the damages in effect fall under this Act?

REP. WILLIS: (64<sup>th</sup>)

My understanding would be that if they were cut down or the damage was done prior to October of 2006 and this was an ongoing matter, that this would not apply.

The caveat here would be if an encroachment was discovered years down the road from now and it was done prior to October of 2006, I think it would be incumbent upon the property owner to show that it wasn't willful and that it happened previous to 2006.

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And that would have to be a case-by-case basis by the courts.

SPEAKER AMANN:

Representative Mazurek.

REP. MAZUREK: (80<sup>th</sup>)

Thank you, Mr. Speaker. Thank you, Representative Willis. I appreciate your answer on that question. Thank you.

SPEAKER AMANN:

Thank you, Sir. Care to remark further?

Representative Alberts.

REP. ALBERTS: (50<sup>th</sup>)

Thank you, Mr. Speaker. I, too, rise in strong support of this Bill. We're seeing an interesting phenomenon taking place across the state. Those stones that mark property lines, fieldstone walls are now being basically removed, in the middle of the night in some cases.

I can't imagine why people need to get stone. I've got plenty of stone in my yard. They can come help themselves. But this is a challenge that we have in Connecticut right now.

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And anything that we can do to protect our open spaces is a good measure, Mr. Speaker, so I urge my colleagues to support this.

SPEAKER AMANN:

Thank you, Sir. Representative Miner.

REP. MINER: (66<sup>th</sup>)

Thank you, Mr. Speaker. If I might, just a few questions to the proponent of the Bill.

SPEAKER AMANN:

Please frame your questions, Sir.

REP. MINER: (66<sup>th</sup>)

Through you. Thank you, Mr. Speaker. With regard to, I guess it's the notification that people seem to be asking questions about and when people might have known.

Is it current policy in the State of Connecticut when they accept a piece of land that it is surveyed and it comes with an A2 survey, for instance, so people know what the boundaries are? Through you, Mr. Speaker.

SPEAKER AMANN:

Representative Willis.

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REP. WILLIS: (64<sup>th</sup>)

Through you, Mr. Speaker. I'm going to confer here. The state gets a survey on all land that it currently accepts.

SPEAKER AMANN:

Representative Miner.

REP. MINER: (66<sup>th</sup>)

Thank you, Mr. Speaker. All land that it currently accepts, does that mean all land that it currently owns? Through you, Mr. Speaker.

SPEAKER AMANN:

Representative Willis.

REP. WILLIS: (64<sup>th</sup>)

Through you, Mr. Speaker. A lot of land that we have previously accepted or have donated does not have an A2 survey.

SPEAKER AMANN:

Representative Miner.

REP. MINER: (66<sup>th</sup>)

Thank you, Mr. Speaker. And I thank the lady for her answers. This is one of those bills, like many, I really do want to support. I don't think it's appropriate that people encroach on others' land.

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I don't think it's appropriate that people cut down other people's trees or build tree forts in property that's not their own. I don't know what happened 75 years ago, when Farmer Johnson gave 100 acres to the State of Connecticut.

And I think it happened quite often. The Chase family gave Topsmead State Park, State Forest to the State of Connecticut. And I'd be willing to bet you that none of that was surveyed.

I don't know whether the neighboring property owners have their vegetable garden on property that's currently owned by the State of Connecticut or not. I'd be willing to bet that the families who adjoin it haven't done it intentionally.

But I don't think the Chases told them where the property boundary is and I don't know if anybody knows. And, if I have a concern about this Bill, it's the retroactivity of the penalty and the significance of the change.

A cord of wood might sell today, even with the current energy crisis, at \$140 a cord. It could probably cost \$14,000 to move a 25- to 30-foot evergreen tree. And I think that's a pretty

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significant change for a penalty to be retroactive.  
And that's my concern.

I don't know that standing before a judge in today's climate that if you cut a tree down two years ago that a judge would feel any compassion towards you in the face of this legislation. I think someone could get pretty punitive.

And I wish there was a way for someone to say, and I certainly can't make the presenter say it, that it's the legislative intent that, if the action occurred prior to the introduction of this Bill, that the court would not be able to look back and be that, I'll use the word punitive.

Because I think we certainly look at things today differently than we did before. If we vote on this Bill, it is my intention to support it.

And it is my hope that the court looks at the record, looks at the conversation in trying to establish what the proper decision might be in terms of what people might have thought or what they might have done 5, 10, 15 years ago. Again, I'm not, I'm not condoning it.

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But I suspect that if we passed a law here today that put someone's husband, wife, child in jail for 15 years longer than they would have been eligible for yesterday, I think Judiciary would have looked at it a little differently and I think the Legislature would look at it a little differently. Thank you, Mr. Speaker.

SPEAKER AMANN:

Care to remark further? Representative Belden.

REP. BELDEN: (113<sup>th</sup>)

Thank you, Mr. Speaker. Mr. Speaker, in reviewing the first few Lines of the Bill, it enumerates a number of categories of land. And it says notwithstanding or not all-inclusive. Would, would this legislation apply to Department of Transportation land in the State of Connecticut?

SPEAKER AMANN:

Representative Willis.

REP. WILLIS: (64<sup>th</sup>)

Through you, Mr. Speaker. Through, the question is would this apply to all Department of Environmental Protection lands? If they were defunct, no.

SPEAKER AMANN:

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Representative Belden, if you wouldn't mind reframing your question, Sir, or asking again?

REP. BELDEN: (113<sup>th</sup>)

Yes, Mr. Speaker. We had a situation in our community where the Department of Transportation owns land, waterfront land adjacent to a state highway. And recently a private developer who owned land on the other side of the street hired an outside contractor.

And there's a controversy still going on over whether or not the individual had approval, all the approvals necessary to cut down all the trees so the condo owners in this new development could see the river.

So my question is, although not enumerated in the language before us, would that type of property owned by the State of Connecticut come under the purview of this Bill?

SPEAKER AMANN:

Representative Willis.

REP. WILLIS: (64<sup>th</sup>)

Through you, Mr. Speaker. No, it would not. This land that's covered in this Bill is only land that's designated as open space. So the Department of

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Transportation would have had to designate the land specifically as open space lands.

REP. BELDEN: (113<sup>th</sup>)

Thank the lady for her response.

SPEAKER AMANN:

Thank you, Sir. Care to remark further? Care to remark further on the Bill before us? If not, staff and guests, please come to the Well of the House. Members, take a seat. And the machine will be opened.

CLERK:

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.

SPEAKER AMANN:

Have all the Members voted? Don't run, Bob. Have all the Members voted? If all the Members have voted, please check the Board to make sure your vote has been properly cast.

If all the Members have voted, the machine will be locked. And the Clerk will take a tally. The Clerk, please announce the tally.

CLERK:

House Bill Number 5447.

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Total Number Voting	133
Necessary for Passage	67
Those voting Yea	133
Those voting Nay	0
Those absent and not voting	18

SPEAKER AMANN:

Bill passes.

DEPUTY SPEAKER ALTOBELLO:

Ready, Mr. Clerk? Would the Clerk please call  
Calendar Number 243.

CLERK:

On Page 20, Calendar Number 243, Substitute for  
House Bill Number 5750, AN ACT CONCERNING THE  
APPOINTMENT OF SPECIAL CONSERVATION OFFICERS,  
Favorable Report of the Committee on Transportation.

DEPUTY SPEAKER ALTOBELLO:

Representative Roy of the 119th, you have the  
floor, Sir.

REP. ROY: (119<sup>th</sup>)

Thank you, Mr. Speaker. I move the acceptance of  
the Joint Committee's Favorable Report and passage of  
the Bill.

DEPUTY SPEAKER ALTOBELLO:

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and that's why they are in this lawsuit right now against the company.

REP. CHAPIN: Thank you very much.

REP. ROY: Any other questions or comments? Seeing none, thank you Mr. Speaker.

SPEAKER JAMES AMANN: Thank you, have a good day gentlemen and ladies.

REP. ROY: Representative Demetrios Giannaros.

REP. GIANNAROS: You made the mistake that our Speaker usually makes, to say Gi-an-nar-i-os.

REP. ROY: Did I say that to you?

REP. GIANNAROS: Gian-ar-os. That's right. Thank you, I'm just trying to be funny. Good morning, Chairman Roy, Members of the Committee. I want to echo the comments made by our Speaker. We have to do something about those types of problems.

Today, I'd rather be talking about elephants. Protecting elephants and our lobsters, even though I don't eat elephants, I do love lobsters. But I'm here to ask you to protect our environment from a slightly different perspective, although I support these other bills.

Mr. Chairman, I'm here to speak briefly in favor of House Bills 5454, 5446, 5447, 5448, 5450. All of these bills relate to the preservation and protection of lands held by

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public trust, and whether those public trusts are either public agencies or private organizations such as the Farmington Land Trust and other Land Trusts.

Farmington Land Trust, of which I have been a member for a long time, like any other trust in the state and across the nation has many acres of land that it's preserving. More specifically, 268 acres of land donated or bought for the sole purpose of preserving, as open space, and protecting the environment.

Dr. Leach, Mr. Bill Wadsworth, Kathy Wadsworth, and Mr. John Vibert from my district, and members of the Farmington Land Trust will be speaking to you a little later, in more detail, about what happened in our particular situation.

I submitted, back in February 6<sup>th</sup>, a proposal for your consideration to strengthen the ability of public and private land-trusts to protect, conserve open space through additional administrative, legal and financial remedies against trespassers.

It is critical that we institute improved legal mechanisms for establishing increased enforcement, damages and penalties when encroachment occurs. Thus it is necessary to strengthen both civil and criminal law sanctions in order to protect those lands from violations that we have seen, in particular, in Farmington.

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In Farmington, a private construction concerns took down trees on lands that were owned by the Farmington Land Trust, damaged, of course, the beauty of the land, but also it imposed significant damage to the land through runoffs and other damage that was done to the soil on the land in question.

And the law at this point does not really address that particular problem in any significant way, and we have been unable to hold those who did the damage, accountable for what they did.

Therefore, what I am recommending, and by the way, there are 78% of land trusts across the state that have reported violations, as Dr. Leeds will tell you from his survey that was done. And land trust reserves 76-1/2 thousand acres of land across the state. What I am recommending is the following.

That there be provisions for preventing accidental or intentional encroachment and trespasses. Requirements that state and municipal authorities actively steward open space. Requirements that conservation officials participate, more effectively, in planning and monitoring of developments which may adversely impact open space.

Measures to raise the perceived seriousness of open space violations, making them more likely to be prosecuted and compensated for, increased penalties for violations, to levels likely to deter violations, and provisions to compensate state and private groups fairly to pay for

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remediation and legal fees. And by fairly, we mean, replacement of the economic cost of the damage.

Current law, the way it lets some people interpret it, if you take down 100 to 150 year old trees, the only thing you can get reimbursed for is the value of the wood and not the economic value of the environmental damage done and remediation of the land. So we ask for your support, of those bills, and perhaps they will be combined, so that what was done in Farmington and many other parts around the state stops.

The objective is here, prevention, more than collecting after the fact. Thank you, Mr. Chairman. If you have any questions, I would be delighted to address them.

REP. ROY: Thank you, any questions for Representative Giannaros? Senator McKinney.

SEN. MCKINNEY: Thank you and I appreciate your testimony. I had heard this issue, but certainly something that we need to address. I guess the question I have is that I am not familiar with the Farmington property. But has the Land Trust posted signs on the property along the border?

For example, some water companies, private water companies, will post, you know, signs saying no trespassing property of. And the reason why I'm asking is, I think, it would be very difficult to prove intentionally intruding on the land in terms of maybe assessing some

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criminal penalties, unless there were signs up.  
And I'm just curious if there were signs up.

REP. GIANNAROS: Thank you Senator McKinney. I believe that when somebody is about to construct a house, they get from the town Planning and Zoning Commission, they get the specifics relating to the land size that they are working on and the borders of the land.

And I don't think we should really place it on the burden of land trusts, to spend tons of money to go and do surveys and put identifiers.

I think if you are a construction company, you should have the obligation to notify all the neighbors that you are about construct, if there is, especially if there is open space and open land, and that is what we are asking for.

Now in some cases, I believe, the Land Trust has markers but I don't think that we should be expecting that from the State of Connecticut land held property, nor from every single land trust to identify every single property with landmarks.

SEN. MCKINNEY: And thank you, and how did these violations, these encroachments come to, how where they found out? Was it just people walking the property, or.

REP. GIANNAROS: The Land Trust, of course, has a board and executive director, and every so often they do walk the land. But if you don't mind, I would rather have Dr. Leach, who knows

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the details of this come up for a moment and answer it for you. Is that ok?

SEN. MCKINNEY: That or I'll wait until he--

REP. GIANNAROS: Well, we can answer very fast, Dr. Leach?

DR. LEACH: I am Charles Leach. I am a board member of the Farmington Land Trust. In answer to your first question, the trees that were cut on our property, which is a sensitive wetland, were cut immediately behind a clearly marked boundary.

We have one photograph that's on the front of the Connecticut Council on Environmental Quality report, which shows the stump of a large tree immediately behind one of our boundary markers.

There was no question they were cut on our property intentionally. And we have a Stewardship Committee, which is very active under the chairmanship of Tina Delaney. And they regularly walk all of our properties. We've had them surveyed and marked.

SEN. MCKINNEY: Thank you very much Dr. Leach, thank you Mr. Chairman.

REP. ROY: Thank you, any other questions for Members of the Committee? Representative Willis.

REP. WILLIS: Thank you very much. And thank you Representative for coming here and representing your community because, sadly, Farmington is

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one of the poster children in this plight of encroachments that have been happening statewide.

As you mentioned in a survey that the Connecticut Council on Environmental Quality put out, 78 land trusts were polled and 61 showed encroachments just recently. And as Dr. Leach pointed out, which was, the reason I raised my hand actually, is to Senator McKinney's question.

These are very clearly marked boundaries and they cut right behind them or encroach. And it's not just trees. Some of our land trust is stone walls they are taking out. So there is a variety of damage that is taking place.

But I have one further comment, actually as a follow-up to our Speaker's comments about the Department of Environmental Protection and Representative O'Rourke's comments.

One of the challenges we have as legislators is the fact that our State lands are not adequately protected, because we didn't no longer have surveyors at Department of Environmental Protection.

And I hope someone will be testifying to this as we move on. But we can't adequately protect our boundaries because our boundaries are not clearly indicated, because the State no longer has surveyors on staff. So this is something we clearly need to address. So thank you for letting me.

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REP. GIANNAROS: Thank you Representative Willis.

REP. ROY: Thank you, any other questions? Seeing none.

REP. GIANNAROS: Thank Mr. Chairman and have a great day.

REP. ROY: Bill Wadsworth.

REP. GIANNAROS: If I may, Mr. Bill Wadsworth is a member of the Town Council in Farmington. He is attending some business and he will be back later in the day. Thank you Mr. Chairman.

REP. ROY: Thank you. Richard Blumenthal.

RICHARD BLUMENTHAL: Good morning Mr. Chairman, and Members of the Committee. I am here to talk to you about two bills. One you just heard testimony from Representative Giannaros, concerning House Bill 5447, and the other is House Bill 5445 and I have concerning warnings regarding mercury in fish and shellfish.

Let me begin with the open space clear cutting bill Representative Giannaros has just presented to you. Essentially, both the economic and the legal rationale, although he is an economist, he's done a very good job in summarizing the law for you as well.

Essentially the gap in the law here is that there are insufficient deterrents to clear cutting and other very destructive, even devastating, acts concerning open space, undeveloped land, that belongs to land trusts

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and similar organizations as well as often to the state and municipalities.

And the gap in the law, as he has suggested to you, is that the damages are pegged to economic measures of timber and other potentially cut structures or wildlife that are immeasurable in their economic value, but given a finite value, for example, the economic worth of the timber, that in no way is commensurate with that environmental value.

And what we seek to do here essentially is to make clear cutters and other open space destroyers pay for the environmental consequences of their action by establishing clear penalties and other measures of damage that will serve as an effective deterrent.

In that spirit, we have suggested a number of changes, they are attached to my testimony at the end of the testimony that clarify and expand those purposes, for example, require that the court award the cost of restoration, monetary damages necessary to fully remedy the problem and provide the court with discretion to award up to five times the cost of restoration or statutory damages of up to \$5,000.

Our experience in this area is sort of capsulized by the East Haddam situation involving clear cutting by Mr. Mellon, which has led to very extensive and lengthy litigation not over yet. The action was brought in 2004, the state has been awarded \$67,000 in damages, \$50,000 to go into a

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special economic project, \$16,000 for violation of the Inland Wetlands Act.

That amount of money, in no way, is a measure of the environmental damage done and what we would like to do also is empower land trusts, like East Haddam, to bring actions by making possible their recovery of costs and other court fees as well as attorney's fees.

So this bill is very important, you're going to hear from folks from East Haddam, from Farmington, which had an experience like East Haddam's except there the status of the land was slightly different because there was no conservation easement, the land was held in fee, so this kind of measure really is important and will send a very important message.

On the warnings regarding mercury in fish and shellfish, this kind of warning posted at places where people buy fish, is important as an education tool as a means of raising awareness and it is very straightforward, simple, factual.

HB 5445

The kind of notice, I brought a sample along, and I think one is attached for each of you to the testimony. Essentially, it's designed to warn women of childbearing age and children about the dangers of consuming too much fish, in effect, too much mercury. We ought to be very proud of our fishing and shell fishing industry.

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REP. ROY: Thank you. Any other questions?  
Representative O'Rourke.

REP. O'ROURKE: Thank you, Mr. Chairman. Norm and HB 5447  
Karl, thank you for your work on this important  
issue. Some of the things that you brought up  
in your testimony really trouble me a lot.

The idea that the DEP has known about  
encroachments on public lands, state land, and  
puts it in a box and says, "No sense in sending  
it up to Hartford, they're not going to do  
anything about it," sort of reminds me of the  
Speaker's testimony earlier on a serious issue  
of public health with the toxic waste report  
that sat in a box over there.

And I understand that the department's under  
funded, but I just don't see any excuse for  
that kind of attitude in our Department of  
Environmental Protection, and I'm trouble that  
they're not the ones that have really brought  
this issue to our attention, it's more CEQ, and  
the different cases in Farmington, and East  
Haddam.

What's the leadership over at DEP, Karl? Why  
has this been ignored for so long?

KARL WAGENER: I'm not sure, but you're correct in  
saying that this has been going on for a long  
time. And we didn't know much about it either  
until we started to dig into it, and I don't  
know for certain, although I'll say this, I'll  
say two things.

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One, people in the field are definitely frustrated. There's a classic catch 22, there is a formal DEP procedure to follow if a field person, such as a forester or a park manager, discovers an encroachment.

It says that the field person is supposed to try to resolve the problem. But if there's any doubt about the boundary line, to contact Hartford.

But there's always a doubt about the boundary line because the first thing encroachers usually do is cut down the tree that the sign on it.

So in need, it goes to Hartford, it says the they're supposed to send a surveyor out to mark the boundaries, but the DEP hasn't had a single surveyor on staff for ages, so that's why these things just end up in the box, because it's a catch 22, you supposed to, you can see.

You know, they used to have surveyors that were laid off, all of the bureaus are understaffed essentially, and I'm not sure why it fell on us to bring it to everyone's attention, but it did.

REP. O'ROURKE: I guess I just, I understand frustration over there. Some of us are up here working trying to get more funding for the DEP, and we need to know about that. People on this Committee need to know that folks are abusing state property or land trust property.

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We don't have enough people to protect the public health, and toxic waste reports are sitting on a desk, I don't know what we have to do to change the culture over there, where the frustration can be turned into action, so we have to encourage more whistle blowing over at DEP or what it is.

But I hope our new commissioner seems like a good person, but we've got to send a message over there that we need to hear about this here and the General Assembly and we need people to not to get frustrated, and to take action and get word to us one way or another [inaudible].

Anyway, I know you're doing that, and I appreciate [inaudible] your work and bringing this to our attention. Thank you, Mr. Chairman.

REP. ROY: Thank you, any other questions or comments? Representative Willis.

REP. WILLIS: First, I want to thank you, Karl and the Council on Environmental Quality and Norm for doing this study, because it really has propelled us to move on this and take some kind of action. As my friend, Representative O'Rourke says, there ought to be a law against this.

And this is just such an obvious case of us, as legislators, stepping forward, and protecting land that has been put in our trust, in the public trust, and we're advocating our responsibility in a very serious way to not be addressing it, and I hope that the

Appropriations Committee can find some money for the surveying piece of it as well.

But I do have a question for you. We've talked a lot about tree cutting, and some of the restoration issues and the penalties. But could you also address the issue of defining encroachments, because, I think, it's not just about trees, and I think it's important that people hear what else is being done on public lands that's not just tree cutting.

KARL WAGENER: Certainly. We define encroachments as any kind of damaging activity that's not authorized by the owner of the land. So tree cutting is the most common, but there are lots of other ones.

There are buildings on state land that don't belong there, there are driveways and roadways, junk being deposited, people using publicly owned land as if it were their own, doing, storing things on it. Oh, just people, go ahead Norm.

NORMAN VAN COR: To add to that, a lot of the things I found were stone walls. Stone walls are a big thing. People steal the wall so that they can build their own walls, and I followed the boundary line up to a large tree, about 20 feet from the home, and it was 200 feet of beautiful lawn with a very well-made stone wall that was there, and I approached the land owner, and, so what?

You know, swimming pools, sheds, like you said, driveways, with no apparent remorse or

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whatever, but you know, if you're going to buy that home, you assume that the lawn and wall and all of that is on property that you're about to buy, and it may not be.

But there just seems to be a blatant disregard, and as the conservation officer told me, people know that there's nothing that's going to be done. So they do it. And that's stealing. That's stealing from the State of Connecticut.

REP. WILLIS: I think also as follow-up to that comment, I had the opportunity to speak to some prosecutors on this and some judges in my area, in Litchfield County. And they said they get cases like this all the time, and make a decision not to prosecute.

And the reason they're not prosecuting is it's not worth it to prosecute these cases because the penalties are so small. And so they walk away from these cases. So they really welcome the Legislature to take action, and the Supreme Court really instructed us to do something. So I think its incumbent on all of us here to do something. So thank you.

REP. ROY: Thank you, any other questions or comments? Thank you very much gentlemen.

KARL WEGENER AND NORMAN VAN COR: You're welcome.

REP. ROY: Bonnie Burr.

BONNIE BURR: Chairman Roy and Members of the Environment Committee, for the record, my name is Bonnie Burr and I'm Director of Government

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Appraised values should not be excluded from consideration by the courts in cases involved trees on private property, simply because of an omission in statute.

In my own experience, measures of damages developed using anything but timber or firewood value have not even been admissible under the current 52-560.

I think it's in the public interest to provide these basic protections to all trees, and all land owners, irrespective of who they are. I can answer any questions if you have them.

SEN. FINCH: Thank you very much, Scott. Any questions for Scott? [inaudible - microphone not on] Okay, thank you very much, Scott.

SCOTT CULLEN: Thank you.

SEN. FINCH: Phil Grande, followed by Sarah Williams, followed by David Sutherland. Is Phil ready?

UNIDENTIFIED SPEAKER: No.

SEN. FINCH: Sarah Williams, and followed by David Sutherland [inaudible - microphone not on]

SARAH WILLIAMS: He's around.

SEN. FINCH: Thank you, Sarah.

SARAH WILLIAMS: Good afternoon, Senator Finch, and Members of the Committee. My name is Sarah

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Williams, and I represent the Guildford Land Conservation Trust. I have a written submission from our President, but I'm going to add my own two cents.

We are the largest, single town land trust in the state. We have about 1,800 members right now, and we are trying to protect, though we have preserved, about 2,500 acres.

So you could guess that I'm here in support of House Bills 5444, 5446, 5447, and 5448. I think the conversation about the tree cutting was excellent during the testimony of the Council on Environmental Quality.

The only piece I would add to that conversation is, that, at least in our town, the old adage about when a tree falls in the woods, actually you can hear it in Guilford, because often it's followed by the rumble of an ATV.

In our town, and our local bordering towns, often that's who's cutting the trees. And on our property, that's who's cutting the trees right now. Whether they need a switchback, or a new entrance, or a wider [Gap in testimony. Changing from Tape 2B to 3A.]

--address this problem, that's another conversation for another day, but we do see this as another little bit that might help us combat this abuse.

On House Bill 5447, the encroachment issue, it was asked earlier whether or not or not land trusts, how well they mark their properties.

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We have an established program from marking boundaries, as do most land trusts, but we're victims of our own success, in that it's a heck of a lot of land to walk every other tree and mark. It's virtually impossible.

What I neglected to say is we are an all volunteer organization. So the kinds of conflicts that we have, they're ongoing. We usually have two or three any given day, not every day, but ongoing conflicts, and actually there's a little antidotal story that just happened two weeks ago as we went to view a property that we were thinking about buying.

It's adjacent to an existing piece of Guilford Land Trust property. But we were unable to access it because the gentleman who lived next to the property had expanded his lawn to at least ten feet within our property boundary. But not only had he done that, he had blocked the public access to this property from the street, so we couldn't get to the land that we protected from the public use, and neither could the public.

Okay, we find this over and over again. So we think we're out shopping property and we can't even see it. So I guess I'd say two more issues. The issue of management of our properties is also a trust issue. People give us land, they sell us land at discounted prices, and expect us to take care of it. And our hands are very much tied on these issues.

And briefly, just a quick support in support in House Bill 5446, the paving. This bill doesn't

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use the word paving, which is interesting to me. We may consider making it a little bit clearer what the limitations are grading. The word improvements has been abused greatly in my limited experience. Thank you, any questions?

SEN. FINCH: Thank you, Sarah. Any questions?  
Sarah, [inaudible - microphone not on] the bill [inaudible - microphone not on]--

SARAH WILLIAMS: I know.

SEN. FINCH: We urge you, and your other friends to [inaudible - microphone not on] as much as I do, to come back and help us to create more public opinion against things you charge. The greedy and selfish [inaudible - microphone not on]--

SARAH WILLIAMS: It's a tough battle, thanks for fighting it.

SEN. FINCH: [inaudible - microphone not on]. The next speaker is David Sutherland, followed by Lydia Antoncic. Thank you, David.

DAVID SUTHERLAND: Good afternoon. My name is David Sutherland, I'm the Director for Government Relations for The Nature Conservancy and I want to express our very strong support this afternoon for House Bills 5444, 5446, 5447, 5448, and 5450, what are generically being collectively being termed as the encroachment bills.

And I want to express our gratitude to the Committee for bringing these bills up, and

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raising them as separate bills, because I think that is the most effective way of addressing those.

And very much express our thanks to the Legislative Commissioner's office for the job they've done in drafting these bills.

And in talking with various people and hearing folks that aren't very involved, wondering with what's wrong with the current penalties, I guess I've thought of an analogy, that if I owned a painting that was particularly valuable, very valuable, because it was one of the last two Rembrandt painting from a particular period of his life.

And let's suppose the other painting from that period from that period of his life was owned by a museum, and I happened to go into that museum, to look at that painting, and as we always do, I just happened to be happened to be carrying some bleach in my pocket. And gosh, some of the bleach accidentally spilled on that other Rembrandt painting. What could the museum do about this accident that I had, or this mistake I made.

And by the way, that mistake happened to vastly increase the value of my Rembrandt painting. Well, what they could do under the statutes that we've got in terms of illegal tree cutting, is that they could base penalties on the cost of the paint and the canvas.

So the museum might take me to court under these types of statutes, and maybe they'd get

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\$110 for the cost of the paint and the cost of the canvas. That's the situation we face with the current tree cutting penalties that, as CEQ has pointed out, were adopted in the 1700's, and are woefully out of date.

And I just, in expressing general support for these, and we have been talking about the conservation community in the last few days, and probably will be coming in with a few minor adjustments, or suggestions for adjustment to the language, and we look forward to working with you on those.

But I do just want to point out once again, that land trusts are private, charitable organizations that have an obligation under Federal IRS and charitable laws, to pursue these types of violations.

If somebody comes and does damage to the outside of my house, I can choose whether or not to go after them. Land trusts, they are obligated under Federal laws as a charitable organization to go after it.

And unfortunately, our current laws make it exceedingly difficult for them to do that. So thank you very much for your work on this, and we look forward to working with you further on it.

SEN. FINCH: Thank you very much. I think you were wise, David, to stray from your written remarks because I think that image will stay with all of us a lot longer than, no offense, your written testimony, which is very fine too. But

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thank you, it's a good way to image the issue,  
and I really appreciate it. Any questions of  
David?

UNIDENTIFIED SPEAKER: He's a lot more creative than  
[inaudible - microphone not on].

SEN. FINCH: You helped us paint a visual image.  
Thank you, David. The next speaker is Lydia  
Antoncic from the Connecticut Bar Association,  
to be followed by Tom O'Dell. Thank you,  
Lydia.

LYDIA ANTONCIC: Thank you. Good afternoon Senator  
Finch, Representative Roy. My name is Lydia  
Antoncic, and I'm here to testify on behalf of  
the Connecticut Bar Association's animal law  
committee, in strong support of House Bill  
5443, AN ACT CONCERNING HUMANE EDUCATION.

In addition to being a member of the CBA, I  
also come to you today as a parent, and the  
founder of the humane education group called  
Humane Education Advocates Reaching Teachers.

I won't reiterate the large number of excellent  
points made in support of this legislation, as  
outlined in my testimony, but I'm just going to  
give you the basic highlights. I also wanted  
to add that in addition to the animal law  
committee, the victim's rights committee and  
the education committee of the CBA is also in  
support of this bill.

The reasons for this bill are obvious. We need  
to prevent violence in our youth, and the best  
way to do this is in schools. This bill is

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SEN. FINCH: Tom O'Dell, Connecticut Association of Conservation and Inland Wetlands, followed by John Vibert. Tom O'Dell, thank you Tom.

TOM O'DELL: Good afternoon, Senator Finch. Bon appetit, Representative Roy. My name is Tom O'Dell. I'm President of the Connecticut Association of Conservation and Inland Wetlands Commissions, better known in the state as CACIWC.

HB 5444  
HB 5450

CACIWC strongly supports legislation that would cost trespassers of protected open space to be civilly liable for any unlawful, harmful action or encroachment, as it is couched in the five bills I'm testifying to support.

On land that has been permanently preserved for the protection of the natural environment, including land preserved by a conservation restriction or conservation easement, where the grantee is a municipality, a conservation organization, or the State of Connecticut.

We believe the Raised House Bills 5446, 5447, and 5448 will accomplish this goal. Since 1998, the state funding has assisted in protecting approximately 50,000 acres in 130 towns across the state.

In many of these towns, the conservation commission has been given the responsibility of managing, or otherwise providing, stewardship of open space land in the municipality has acquired, using, in part, the state's Open Space and Watershed Land Acquisition Program.

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Encroachment of protected municipal open space covers the spectrum of activities described in Raised House Bill 5447. But the lack of legal and financial probability to enforce encroachment, and recover damages, creates a significant barrier for conservation commissions and a municipality to manage protected open space effectively.

Encroachment causes soil and sediment erosion, pollution of wetlands and watercourses, establishment of invasive plant species, loss of biological diversity, and reduction in the community use for passive recreation.

Encroachment, as we've defined here, compromises the very purpose of acquiring and protecting open space, and results in significant loss of investment of state, municipal, and private organization funds.

For these reasons, we urge the Environment Committee to support House Bills 5446, 5447, and 5448. CACIWC also urges your support for Raised House Bill 5444, AN ACT MONITORING BOUNDARIES OF DEPARTMENT OF ENVIRONMENTAL ADMINISTERED LAND and Raised House Bill 5450, AN ACT ESTABLISHING A DEPARTMENT OF ENVIRONMENTAL PROTECTION LAND TRUST LEGAL ACTION ACCOUNT.

Both of these bills will also support the enforcement of encroachment or protected open space land. Thank you.

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SEN. FINCH: Thank you very much. Are there any questions for Tom? Thank you very much, Tom. Our next speaker is John, is it Vi-bert of Vi-bert?

JOHN VIBERT: Vi-bert.

SEN. FINCH: I didn't get either one of them. Followed by Charles Leach and Katherine Wadsworth. Thanks, John.

JOHN VIBERT: Mr. Chairman and Members of the Committee, my name is Vibert. I'm the President of the Farmington Land Trust.

HB 5444 HB 5446  
HB 5447 HB 5448  
HB 5450

The Farmington Land Trust supports the five bills being proposed to strengthen protection for open space. The Land Trust feels strongly that this legislation is urgently needed to provide deterrence and improved protections to the open lands held by state, municipal, and land conservation groups.

In July 2004, the Farmington Land Trust discovered that a hillside on its Carey Pasture property, had been clear cut, eight trees had been cut down, partially removed, and the wet meadow below was exposed to the home construction, in progress on the hill above.

The situation grew worse due to negligent containment of the construction site. Soil flows easily down the hill with little vegetation to impede it. And the discovery of a drainage plan that funneled a hillside of water to a single point of discharge onto Farmington Land Trust's property, highlighted

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additional danger to the fragile environment that was being protected forever.

After several months, and with the assistance of town and state officials, this site was stabilized, and the Farmington Land Trust's attention moved to remediation of the damage caused by the encroachment.

To our dismay, enforce the mechanisms provided little punitive or remedial relief. Despite a thorough police investigation that identified perpetrators of the tree cutting, prosecutors demurred to the civil processes for correction and restitution.

The Farmington Land Trust soon discovered that the Connecticut law set damages for tree cutting to be based upon the value of the wood, instead of the value where the environment of the trees grew in.

Rough estimates valued the eight trees at \$400. Even a triple damages, this was hardly enough to restore the hillside. It was not even enough to pay an attorney to win the case.

There was an alternative suggestion. Value of the damages based upon the property of the value before and after the encroachment. But the very nature of protect to open space, that it cannot be developed, minimizes the commercial value of the property, and therefore minimizes the value of the damages.

Thus even the alternative provided little relief. If I were an individual in this

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situation, or even a commercial venture, the economic solution is simple. Lick your wounds and go home. It would make little sense to spend more than the likely return if the case were won.

But I'm not an individual in this situation, we are a land trust. We are entrusted to protect the land, the lands our donors have provided, and that our members own, and they expect that protection.

Connecticut state law should provide us with the ability to protect our land, without incurring a financial consequence for doing so. In my written remarks that I've provided to you, I've listed several points of reasons why we strongly support this bill, but I would like to hit on two.

SEN. FINCH: John, I've got to ask you to sum up. The time is up, and we've got a number of other speakers here. So we do have your written testimony.

JOHN VIBERT: That's fine.

SEN. FINCH: And you're words are making a big impact. So just rest assured we hear you.

JOHN VIBERT: Okay, thank you.

SEN. FINCH: Thank you very much. Any questions of John before we proceed? Thank you for all the good work you do, we appreciate it, even if it's not in our town.

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JOHN VIBERT: Well thank you and certainly I support your support for these five bills.

SEN. FINCH: Thank you, John. Our next speaker is Charles Leach, to be followed by Katherine Wadsworth.

CHARLES LEACH: My name is Charles Leach. I'm a board member of the Farmington Land Trust. And I'm going to report to you, Mr. Chairman, Ladies and Gentlemen, I'm going to report to you the results of a survey of land trust encroachments which I personally carried out around the State of Connecticut.

HB 5447  
HB 5448

This was undertaken because of our outrage on what had happened to our property, that John Vibert just finished describing, and because we knew that we were unlikely ever to be property compensated for our monetary or our environmental loss, we thought that the least we could do would be to get some gain out of this situation by forming a database that you ladies and gentlemen could make your decision as to what to do with these five encroachment bills.

We surveyed 96 land trusts, we got responses from 61, this was from 116 trusts and similar organizations in the state. And Linda Bowers from the Land Trust Service Bureau has reports of encroachment on 17 others.

Out of the 61 who responded to us, 52 reported encroachments. Out of the encroachments that we documented, there were 85 major injurious encroachments on open space property.

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These included 28 tree cutting, 9 road building, parking heavy equipment, heavy equipment trespass, many dumpings of clippings and brush, half a dozen thefts of stone walls, innumerable trespasses by ATVs, neighbors pushing their property lines in by mowing or cutting, and our favorite was the lady down in Chester who buried her husband on land trust property.

So I just want to mention to you that we consider these invasions and encroachments to be grossly and flavoredly illegal. What was done to us was done immediately behind a land trust border marker. We are very careful to survey our lands in our tiny 267-acre land trust, and although that is a problem in some land trusts in the state, it's certainly not with ours.

I just wanted to present in skeletal form these data that we've collected. And to allow to ask me any questions about our findings.

SEN. FINCH: Thank you, Dr. Leach. Are there any questions? Thank you very much for coming out and giving us your information. Katherine Wadsworth, to be followed by Kelly Wind.

KATHERINE WADSWORTH: Good afternoon. Thank you for letting us speak today before you. I'm also from the Farmington Last Trust, on the Land Acquisition Committee, and in testimony in support of mostly House Bills 5447 and 5448.

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I've been listening today to the testimonies and the questions from the Committee, and the basis of restitution of invasions and violations of land trust properties, and I just wanted to say that also for us, it's not just a question of trees coming down or vegetation coming down, or stone walls disappearing, this is a real affront to the existence of land trusts and conservation groups.

The kinds of things that happen to us are just so flagrantly insulting to our reason for being, that some violators may feel that we have no recourse, and so that we are basically stuck with what they've done to us.

And the other point that I wanted to make was when Mr. Blumenthal was testifying this morning, he made a comment about a requirement that they need to be, in order for a land trust or a conservation group to be able to apply for assistance from the Attorney General's office, a conservation easement has to be in existence.

And I just wanted to hope that you will consider that, by nature, properties owned by land trusts or conservation groups are protected, and we would like not to have to apply to put conservation easements all over all of our own properties to qualify for help from the AG's office.

And so our hoping that if that is a requirement, that that can be eliminated, and just protected properties in general, whether they have an easement over them or owned by a conservation group, can also be considered for

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help from the Attorney General's office. Thank you.

SEN. FINCH: Thank you. Any questions from any Members of Committee? Thank you very much. Kelly Wind, followed by Adam Moore.

KELLEY WIND: Senator Finch, Representative Roy, Members of the Environment Committee, thank you for the opportunity to comment on House Bill 5443, AN ACT CONCERNING HUMANE EDUCATION.

My name is Kelly Wind, and I'm a Research Associate of Animal Welfare Advocacy, an organization devoted to promoting legislation that fosters the humane treatment of animals, and prevention of cruelty in the tri-state area.

On behalf of Animal Welfare Advocacy, I respectfully request the Environment Committee favorably report House Bill 5443.

AWA supports the inclusion of humane and character education in the school curriculum because it offers the best vehicle to prevent violence against animals and humans. It will help identify a propensity for violent acts early on, and teach children vital core values, such as respect, kindness, responsibility, and compassion.

These and other similar values are sorely needed to counteract violent trends in our youth. Recent highly publicized shootings in schools, including the Columbine shootings, have raised serious questions regarding how we

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them to be able to do it all together. If anybody sees him out in the hallway.

Thank you, Adam.

ADAM MOORE: Thank you Senator Finch, Members of the Environment Committee. I am pleased to testify before you today before the encroachment bills and the horse trail bill. And I will paraphrase in the interests of time.

HB5448  
HB5449  
HB5450

To begin with, the Connecticut Forest and Park Association is a non-profit conservation organization founded in 1895. It is itself a land trust that owns conservation land and holds easements. We also maintain the 800-mile Blue-Blazed Hiking Trail System and helped acquire many of the state parks and forests.

I'll just go through the bills. Raised House Bill 5444, an act creating a land trust legal action account. We support this bill. It would be very helpful to land trusts, which are non-profits with limited resources.

House Bill 5446, an act preventing paving of abandoned roads, we support this bill. It's quite sensible. It allows access to land-locked landowners, yet protects the conservation status of the protected lands.

House Bill 5447, AN ACT CONCERNING ENCROACHMENTS ON OPEN SPACE LANDS, we generally support this bill, although I do have a concern. The language of the bill defines trails as a form of encroachment if such trails are not authorized by the landowner. And

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certainly unauthorized trails may indeed be an encroachment, but I question what is exactly meant by the term authorized.

For 75 years, we've maintained 800-miles of Blue-Blazed hiking trails. Many of them cross open spaced lands. Some of them have written authorization for the trail to exist, but the vast majority do not.

The vast majority of the trail system simply exists through historic agreements, handshake agreements, made, in some cases, decades ago.

So we used to work with the Committee and the Council on Environmental Quality on adjusting the language of that portion of the bill.

Raised House Bill 5448, I oppose because of a number of concerns. First of all, I don't think the bill properly addresses situations where a conservation organization like Connecticut Forest and Park, holds an easement over land where the fee interest is privately owned.

In this case, some easements require the private landowner to notify the easement owner of his intention to cut trees, and in some cases they do not.

May I just briefly finish? Okay, in this bill, this bill would require the landowner to get the permission of the easement holder and take away his right to practice forestry and cut trees on the land.

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replacement, the time that it takes to do it about?

RON BRANDT: The time that it takes to do it is somewhere between 10 and 15 minutes or less. The replacement cost of the filter is around \$32-33.

REP. DAVIS: Thank you very much.

SEN. FINCH: Thank you, Representative Davis, and thank you Ron. We're going to get you an address for us to mail it. Well, if you're going to send us one--

RON BRANDT: I'll send you one.

SEN. FINCH: Yeah, that would be great. It will be in Clark's office as a paperweight until the vote, so whoever wants to go see it. Thank you very much, Ron.

Our next speaker is Elizabeth Dock from the Branford Land Trust to be followed by Tim Gondek from Clean Water Action. Thank you, Elizabeth.

ELIZABETH DOCK: Thank you, Senator Finch. Good afternoon, Members of the Committee. My name is Elizabeth Dock. I'm speaking today in support of Raised House Bills 5444, 5456, 5447, 5448, and 5450 on behalf of the Branford Land Trust. In the 38 years since the founding of the land trust, we've acquired fee titles and conservation easements that protect more than 900 acres of open space land of all types,

HB 5446

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upland woods, fields, inland wetlands, and coastal wetlands.

The land trust manages, and we're an all-volunteer organization. We manage this land with the objection of maintaining and enhancing the habitat value of that land, and provided areas for passive recreation by Members of the Committee, where appropriate.

But we, as most land trusts have had to face, increasing encroachment of the land that we're protecting, and I've submitted with my written testimony some photos of some of the top examples.

The bills being considered by this Committee and critically important for assisting the private and public owners of protected open space with fulfilling their responsibilities to protect the land.

Each of the bills is important in that each will increase the respect of abutters toward the boundaries, giving us tools to use in our defense. The benefit of the explicit provision that the land trust can recover the cost of restoration and legal fees, House Bills 5447 and 5448, is clear.

Providing the DEP land trust legal action account proposal, House Bill 5444, will enable all land trusts, large and small, to initiate legal actions to protect the open space, that they are entrusted with.

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Better defining the rights of access along abandoned roads, House Bill 5446, will hopefully eliminate some of the encroachment problems before they arise and provide for better resolution and restoration of encroachments that do occur.

Finally, providing for better monitoring of boundaries and the restoration compensation of the land that the DEP protects, and House 5440 will better protect that part of the state's open space for the benefit of us all.

HB5450

I just was thinking about on my way in today, that the land trusts really have traditionally depended on the good will of the abutters. And unfortunately, that good will seems to be eroding away on us, so, competitive world with the pressures of development and landscaping pressures, that people are encroaching that never did before and they don't really understand why we are so frustrated, but they do, unfortunately, understand that our hands really are tied and we can't really respond in the way we should be able to.

So these proposed statutes will really help us a great deal. We really desperately need the help. We've got some tremendous problems, and that we just, in the future, we just keep seeing more and more and more.

The statement I've prepared, I spoke with the Chairman of Branford's Park and Open Space Commission over the weekend, and he couldn't, didn't have time to also put in a statement, but he says that he's fully in support of all

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these bills because the Branford town open spaces that are also facing pressures.

SEN. FINCH: Thank you for your testimony. Could you just tell us, are we looking at before and after pictures here?

ELIZABETH DOCK: Yes, the top one, some of them are easements. The top one to the right is a fee strip that we acquired from a developer, and as far as the open space set aside for development.

Almost immediately, he after the deal had been passed, I think after five days, they went in with all of their [inaudible] equipment, and they put a huge swath right across the tract.

And they were me ratherly arrogant about and we really, we've spent now \$750 worth of legal fees for just getting our legal advisor to write letters telling them of what our stand is.

SEN. FINCH: If other Members of the Committee haven't seen this, these are very dramatic pictures of the kind of damage you're talking about. We appreciate you bringing these photos to us, and hopefully CTN is going to pick up these pictures and broadcast them around because they're very dramatic and we thank you for--

ELIZABETH DOCK: Right. Can I explain the other three just also rapidly. One was a tree cutting on an easement, and then another one is a partial-view swath that was cut through so

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that the people behind could look at the salt marsh, which is detrimental to the salt marsh itself. And the other is just a lawn encroachment in what was our open space. Thank you.

SEN. FINCH: Thank you for the good work you're doing, Elizabeth. Keep it up.

SEN. FINCH: Thank you.

SEN. FINCH: Our next speaker is Tim Gondek, to be followed by Kachina Walsh-Weaver and Robert Commerford. Tim, thank you for coming.

TIM GONDEK: Thank you for having me. Good afternoon. I realize time is brief. I'll try to keep this as short as possible. My name is Tim Gondek. I'm a Campaign Associate with Clean Water Action. I'm here today to talk about Raised Senate Bill 291, AN ACT REDUCING DIESEL EMISSIONS INSDE SCHOOL BUSES.

Much of what I was going to say has been covered by colleague Madeleine Weil, so I'll try to go over that. We support the goal of Raised Senate Bill 291, which would require the instillation of closed-crankcase filtration systems. This would help shield children riding the bus from dangerous levels of diesel pollution.

In 2005, the Legislature overwhelmingly supported Special Act 05-7, which aimed to address the health crisis posed by diesel pollution by calling for the creation of a comprehensive diesel pollution strategy.

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work with people. And there's usually three or four workshops each session.

REP. O'ROURKE: Where do you hold them? Like in town hall or something?

DEBRA DICKEY: Usually the local humane society hosts them, and often if their facility is large enough, they'll have it there, if not they'll rent a space.

REP. O'ROURKE: Thank you.

REP. ROY: Any other questions, comments?  
Representative Davis.

REP. DAVIS: Just a thought and suggestion, talking to the Department of Education to get that workshop that I see you eligible, so that you might have a few more teachers who would be interested in coming in and listening to what they have to say.

DEBRA DICKEY: I didn't bring a lot of material, but I do have an adoptive classroom package if anyone would like to see it. And one of our catalogs so you can see the amount of material available if anyone's interested.

REP. DAVIS: Thank you.

REP. ROY: Any other questions. Debra, thank you very much. Karen Burnaska, followed by Nick Crismale.

KAREN BURNASKA: Representative Roy, Members of the  
Committee, my name is Karen Burnaska, I am the

HB 5447  
HB 5445  
HB 5446 HB 5448  
HB 5450

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Endangered Land Coalition Coordinator at Connecticut Fund for the Environment. CFE is a non-profit environment advocacy organization, and together with its permanent program, Save the Sound, represent over 5,000 people in Connecticut.

And today I am here to tell you that CFE strongly supports House Bill 5447, which is AN ACT CONCERNING ENCROACHMENT ON OPEN SPACE LANDS. As you've probably heard throughout the day, encroachment on open spaced lands is a serious and growing problem in Connecticut.

With millions of dollars routinely at stake in the real estate market, it is all too tempting for developers and landowners to clear adjoining property to greatly increase their own property's value.

Yet, land trusts, municipalities, and other towns, and owners of open space, have little practical remedy under the current law. Though they may bring in action for damages to recover the lumber value and market value of the resources, this cannot begin to compensate the open space landholder and the public trusts for the damages done to them.

And I will remind you all of David Sutherland's analogy to the two Rembrandt paintings. Even more importantly, such money damages are insufficient to serve as a deterrent, to those who have millions to gain by removing a few thousand dollars worth of timbers from their view.

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The bill would allow open space landowners to recover the costs of restoring the land to its original condition, plus reasonable costs for attorney's fees.

CFE would also support the addition of a provisional law for civil penalties, in appropriate instances, to serve even more of a deterrent.

And in conclusion, CFE also supports, and I've heard this kind of litany of bills, that go along with the related bills that are related to this problem that House Bill 5445, 5446, 5448, and 5450. I thank you today for your consideration.

REP. ROY: Thank you, Karen. I think Monet and Van Gogh would have been much more analogous to the environment, but, who am I to get involved in that argument. Any questions for Karen? Thank you very much.

KAREN BRUNASKA: Thank you very much.

REP. ROY: Okay, the next two speakers listed are Nick Crismale and Bart Manzi, neither of whom are here, they're lobstermen and they would have encouraged the Legislature to work to help save the lobster industry. We do have some other legislation coming up in addition to what we're hearing today.

With that, William Moore. And following William will be Shawn Logue.

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**Statement of Eric Hammerling, Executive Director of the Farmington River Watershed Association, on Raised Bills 288, 5422, 5447, and 5448**

Dear Co-Chairmen Finch, Roy, and Members of the Environment Committee,

Since 1953, the Farmington River Watershed Association has worked to protect the natural resources of the Farmington River and its watershed that spans 609 square miles and parts of 33 towns in Connecticut and Massachusetts. The three issues that I will focus my comments on today involve matters in the water (hydropower), and matters on the land (IPM at schools, and protecting the integrity of open space lands). Unfortunately, I am unable to present the following testimony in person today, so I am submitting the following for the record.

- S.B. 288, LEASE AGREEMENTS FOR THE GENERATION OF HYDROELECTRICITY. In general, FRWA supports the position of the DEP with regard to this bill, but we raise the cautionary flag of unintended consequences. This bill would allow the DEP to enter into a lease agreement with a private entity to allow the private entity to generate hydroelectricity, but it provides no standards under which this lease consideration should take place (for example, we believe a lease agreement should only be a consideration at an existing structure owned by the DEP that has not been slated for removal). Similar to our position on a similar bill presented last year, we would be most comfortable if the scope of this bill were limited to the potential lease between the DEP and a private entity on the Upper and Lower Collinsville Dams along the Farmington River rather than be extended to the entire State.

- H.B. 5442, MANDATING INTEGRATED PEST MANAGEMENT AT SCHOOLS. We would like to associate our testimony with that of Nancy Alderman of EHHI. In short, IPM would be a step backward for children's health by retreating from last year's PA05-252 that banned lawn-care pesticides at Children's Day-care Centers and Grammar Schools.

- H.B.'s 5447 & 5448, CONCERNING ENCROACHMENT ON OPEN SPACE LANDS & INCREASING PENALTIES FOR ILLEGAL TREE CUTTING. We strongly support both of these bills although we realize the definitions of the variety of affected lands, encroachments, open space, and the penalty structure can be tightened. These bills are prudent and necessary for several reasons: 1) the problem is real -- scores of land trusts across the state have reported encroachments on lands that were specifically set aside as "protected open space"; 2) land is often donated to land trusts or acquired by land trusts because of the inherent natural values. When these values are diminished significantly without compensation it is tantamount to a breach of faith between the donor/seller and the acceptor/buyer; 3) these bills are set-up to prosecute the most egregious violations of open space and allow the court and landowner the flexibility of determining whether prosecution is necessary (presumably it would not be necessary if an innocent mistake were made); and 4) these bills recognize that a tree is not just a potential building material but is an integral element of the land with a value that goes beyond lumber. We'd like to recognize the Farmington Land Trust, CEQ, and the Committee for bringing these important issues to the forefront.

