PA12-047

SB0263

House	6139-6147	9
Planning & Development	514-522, 553, 554, 555, 558, 583-590A, 591-591A, 592	25
Senate	1729-1733, 1923-1924	7
		41

H – 1140

CONNECTICUT
GENERAL ASSEMBLY
HOUSE

PROCEEDINGS
2012

VOL.55
PART 18
5829 – 6187

The bill as amended is passed in concurrence.

Will the Clerk please call calendar 465.

THE CLERK:

On page -- on page 30, calendar 465 substitute for Senate Bill number 263, AN ACT CONCERNING LIABILITY OF ZONING ENFORCEMENT OFFICERS. Favorable report by the committee on judiciary.

DEPUTY SPEAKER ARESIMOWICZ:

Representative Gentile of the 104th, you have the floor, Madam.

REP. GENTILE (104th):

Thank you, Mr. Speaker and good evening. Mr. Speaker, I move for acceptance of the joint committee's favorable report and passage of the bill.

DEPUTY SPEAKER ARESIMOWICZ:

Question is on acceptance of the joint committee's favorable report and passage of the bill. Representative Gentile, you have the floor, Madam.

REP. GENTILE (104th):

Thank you. Mr. Speaker, this bill eliminates the penalty of triple damages that a zoning enforcement

official must pay when a court finds that the official levied a fine frivolously or without probable cause against a property owner.

The bill subjects a zoning enforcement official now with this elimination to the same liability as any other municipal official and employee. Mr. Speaker, I move for passage of the bill.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, Madam. Will you remark further on the bill before us? Representative Aman of the 14th, you have the floor, Sir.

REP. AMAN (14th):

Thank you, Mr. Speaker. The summary was correct that the zoning enforcement officer now is under the same rules and regulation as any other municipal employee. The reason that we're going ahead with it is that to the best of our knowledge no zoning enforcement officer has ever paid this penalty.

And evidently it is causing some troubles for the municipalities and cities as they try to rewrite ordinances and also when they're looking at some of their insurance policies. So for those reasons we

will be -- I will be supporting removing it. It's an obsolete, never used part of the statutes. So again I urge my colleagues to support it. Thank you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, Sir. Will you remark further? Representative Lavielle of the 143rd, you have the floor, Madam.

REP. LAVIELLE (143rd):

Thank you so much, Mr. Speaker. Just a question for the proponent of the bill if I may.

DEPUTY SPEAKER ARESIMOWICZ:

Representative Gentile, prepare yourself. Representative Lavielle, please proceed.

REP. LAVIELLE (143rd):

Thank you very much. I would just like to know what if -- if the Prerogative could tell us what the origin of this extreme penalty of triple damages was and why it was different than that of other municipal enforcement officers. Thank you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Representative Gentile.

REP. GENTILE (104th):

Through you, Mr. Speaker, unfortunately no I cannot tell you because I don't know what the origin was. Obviously that was put in statute long before I was here.

DEPUTY SPEAKER ARESIMOWICZ:

Representative Lavielle.

REP. LAVIELLE (143rd):

Well I thank the Representative for her answer. That's sort of the general feeling among the mayors and first selectmen in my district all of whom feel that this is and in fact SWERPA, the Southwestern Regional Planning Association in all of those towns that this is an extreme penalty inflicted or hung over the heads of people who happen to fulfill this particular position.

So we're very -- we're very pleased with this and want to see the bill go through and I stand in very strong support. Thank you very much, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, Madam. Representative Hennessey of the 127th, you have the floor, Sir.

REP. HENNESSEY (127th):

Thank you, Mr. Speaker. As a former member of the planning and zoning committee I very happy to see this before us and commend the Chairman for bringing this forward. Thank you.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, Sir. Representative Hetherington of the 125th, you have the floor, Sir.

REP. HETHERINGTON (125th):

Thank you, Mr. Speaker. A brief question to the proponent please.

DEPUTY SPEAKER ARESIMOWICZ:

Please proceed, Sir.

REP. HETHERINGTON (125th):

Through you, Mr. Speaker, is the town precluded from indemnifying the zoning official if he or she were to be subject to these extreme penalties? Through you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Representative Gentile.

REP. GENTILE (104th):

I'm sorry. I had difficult hearing all of the question could the good Gentleman please repeat that.

REP. HETHERINGTON (125th):

Yes.

DEPUTY SPEAKER ARESIMOWICZ:

Representative Hetherington, I apologize, Sir. Would you please repeat your question?

REP. HETHERINGTON (125th):

That's all right. Thank you. I'm sorry. Through you, Mr. Speaker, is the zone -- is the town precluded from indemnifying the zoning official if the zoning official were subject to these extreme penalties? Through you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Representative Gentile.

REP. GENTILE (104th):

Through you, Mr. Speaker, there is nothing relative to that in this particular piece of legislation.

REP. HETHERINGTON (125th):

I see.

DEPUTY SPEAKER ARESIMOWICZ:

Representative Hetherington.

REP. HETHERINGTON (125th):

Okay. Thank you. I thank the Gentlelady for her response. And thank you, Mr. Speaker. I would just add that this is really an anomaly in our law. Why the zoning officials should be singled out for these extreme penalties and it -- have the effect only of deterring a zoning official from doing his or her job because of the risk that's -- a court might determine this to be in excess of their authority.

And I think that that would only have the effect and may have already had the effect of deterring zoning officials from carrying out their proper duties. There's no reason to single these people out

for these extreme penalties and I would strongly urge the passage of this bill. Thank you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, Sir. Will you remark further on the bill before us? Will you remark further on the bill before us? The board being empty, nobody standing to be recognized. Staff and guests to the well of the House. Members take your seats. The machine will be opened.

THE CLERK:

The House of Representatives is voting by roll call. All members to the Chamber please. The House of Representatives is voting by roll call.

DEPUTY SPEAKER ARESIMOWICZ:

Have all the members voted? Have all the members voted? If all the members have voted please check the board to ensure that your vote has been properly cast. If all the members have voted, the machine will be locked. The Clerk will take a tally. The Clerk will announce the tally.

THE CLERK:

Senate Bill 263 in concurrence with the Senate.

Total Number voting	134
Necessary for adoption	68
Those voting Yea	134
Those voting Nay	0
Those absent and not voting	17

DEPUTY SPEAKER ARESIMOWICZ:

The bill is passed in concurrence. Will the Clerk please call calendar 424.

THE CLERK:

On page 24, calendar 424 substitute for Senate Bill number 337, AN ACT CONCERNING THE SILVER SYSTEM. Favorable report by the committee on public health.

DEPUTY SPEAKER ARESIMOWICZ:

Representative Roldan of the 4th, you have the floor, Sir.

REP. ROLDAN (4th):

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

JOINT
STANDING
COMMITTEE
HEARINGS

PLANNING AND
DEVELOPMENT
PART 2
342 -679

2012

because I, I loved this bill last year. This would work very well in my District. So, it was just a language issue or conceptually were people concerned that we would be cherry picking items out of the charter, or both?

REP. CHAPIN: As I recall reading the Governor's veto message, it had to do with whether it limited the public's opportunity to participate and whether or not, quite frankly -- and actually Senator Cassano brought this up last year during the hearing -- whether it would be used politically. I think at that time I might have suggested that charter revision under our existing statute gets used politically and some of those opportunities may continue to exist. But I think this change -- I think the benefits of this change would outweigh any of the negative aspects.

REP. REED: Thanks for refreshing my memory. So many of these bills have interesting journeys. So, it's good to kind of catch up with their story line. Thank you for testifying.

Thank you, Mr. Chairman.

SENATOR CASSANO: Anyone else?

Thank you very much.

REP. CHAPIN: Thank you.

SENATOR CASSANO: Representative John Shaban, then Gayle Weinstein.

SB263

REP. SHABAN: I want to thank the Chairs, vice Chairs, ranking members and the members for giving me a couple minutes today. I'm John Shaban, State Rep from 135th which is Weston,

Redding and Easton. I'm here to testify in support of S.B. 263 and to offer perhaps a slight alternative to what's in the proposed bill.

I think as the Committee knows, the current state of the law that's under Section 8-12a creates a differing -- different standing for zoning enforcement officers, the different liability standard, a different -- different standard altogether from any other municipal employee in the performance of their duties. Under Section 7, Title 7 Section 101a of our General Statutes, municipal officers and employees and whatnot have a degree of protection in law that the towns have to essentially hold them harmless if they're sued and found liable for negligence or civil rights violation. And as a separate section, if, if they act in a willful and wanton and malicious way that there may be some reimbursement back to the municipality. But either way, those municipal officers are protected.

Section 8-12a, which is the ordinance that says that a town could adopt certain zoning ordinances and issue citations thereunder adds a Section c that says the zoning enforcement officer can be held liable for treble damages if, if he's found to act in a frivolous manner.

So, you have personal liability and a different evidentiary standard aimed at one particular municipal officer. So, that -- from a public policy point of view, I don't think that makes a whole lot of sense because you have differing standards and -- but from an actual application point of view, and you're going to have folks speaking after me

testify to this, it creates a chilling effect on what zoning enforcement officers can do or are willing to do. And it also creates a chilling effect on what certain towns are willing to do with respect to passing these ordinances because they're going to open themselves up to different lawsuits for different standards.

So, S.B. 263, I think, is a positive step in the right direction. Essentially, what it does is it pulls the language from 7-101, the existing municipal liability statute, and plugs it into section c of the zoning enforcement, zoning ordinance statute. But by doing so, I think it actually -- it may create another issue because suddenly -- I think the proposed bill has, you know, reasonable attorneys fees they can be liable for. Well, that's now under 7-101. By tracking the language of 7-101 but by still applying it to one municipal employee, that could infuse -- in my day job I'm an attorney, so, this is -- well, you know, this is the things we do. We're like, well, we carved it out separately over here. So, the legislative intent must have been to treat ZEOs differently.

I don't think that's the case. What we're trying to do is to get ZEOs treated the same as every other municipal employee, building inspectors and whatnot. So, my suggestion is what S.B. 263 should do is just strike Section c in its entirety, and thereby ZEOs by operation of law will default back to section 7-101 and be treated just like every other municipal employee. And, so, the towns -- the towns and ZEOs and whatnot can operate with the same set of certainty, same set of rules, same standards and they'll know what they're doing.

So, with that, I've submitted written testimony. There's some other folks are going to testify after me. I'm willing to answer any questions or provide any assistance.

SENATOR CASSANO: Okay. Questions? Mr. Ritter.

REP. RITTER: Thanks, Representative Shaban.

Just through you, Madam Chair and Mr. Chair, just a quick question for you.

I went through the statutes last night. There's no good college basketball games on. So, I actually was digging a little bit.

SENATOR CASSANO: (inaudible) for a while.

REP. RITTER: And been for a while, that's right, from a UConn fan's perspective.

But the only thing I wanted -- I tend to agree with you. I mean, this notion that we sort of treat zoning officers differently, and no one can really seem to point to the historical reason for that. My guess is there is one bad actor somewhere and they hit it.

REP. SHABAN: I think that's probably right.

REP. RITTER: But there is, there is -- there are statutory provisions that do actually carve out the identification section of 7-101a and I'll give you an example. Title 7, Board of Finance members -- now, in Hartford, I -- Bloomfield, I represent they don't have Board of Finance. But you actually can be penalized and fined for certain things, particularly regarding around expenditures, a member of the Board of Finance. The section, I want to say

it's Title 4, which puts another fine on certain members who overspend and things like that.

So, is sort of the thought that we should treat no one differently and everyone should be under 7-101a? Or how do you account for these other times in statutory language where we actually have taken individual officers and said, no, forget 7-101 A, we will fine you in certain cases?

REP. SHABAN: Well, I, I don't know what the legislative history is behind the section, was it Title 4 or whatever. But I think just by your example, I mean, I think the distinction is one is a fine. And if it's the Board of Finance, that's actually folks with more of a fiduciary duty over people's money. So, there may be, there may be a rationale behind saying, all right, you're in charge of the purse. We're going to, we're going to -- little more scrutiny, there's a fine there, something -- it makes some sense perhaps, and I don't know this is what the legislative history is, but it makes some sense, I think, from a policy point of view to maybe hold a Board of Finance member to a little higher level of scrutiny. But the difference between a ZEO and the building inspector, there's no rationale.

REP. RITTER: Right, yeah. And my last point here is that's where we agree. I think that there are -- I want to be careful that we don't make the argument there could be no differences from 7-101a or distinctions. But in this case I'd agree, it does seem a little, a little outdated.

REP. SHABAN: Yeah, fair point, fair point.

SENATOR CASSANO: Other comments or questions? Representative Smith.

REP. SMITH: Thank you, Mr. Chair. And through you, a question for Representative Shaban.

You know, I tend to agree with you. It sounds like what we're trying to do here is carve out a section for the ZEOs when, in fact, they're already protected, in my mind, or should already be protected, in my mind, under 7-101a. I mean, if they're a municipal employee, they should be protected and held harmless just like any other municipal employee.

So, I can't for the life of me think why we would have a carve-out section for them and subjecting them to treble damages and reasonable attorney's fees and -- it just, it just seems like a, you know, a couple lawsuits waiting to happen.

REP. SHABAN: I agree. I mean, I think, I think some of the testimony will speak to -- I mean, more to the fact there was a chilling effect. But I actually think there are some lawsuits or threats of lawsuits out there that are lingering because of this uncertainty and there doesn't need to be uncertainty. I mean, that's just, you know, bad, bad legislation, I think, unless there's an absolute distinct reason to have a differing standard, and here I don't think there is one.

REP. SMITH: So, then, your suggestion would be to simply do away with the carve out and just have them held harmless under the 7-101a?

REP. SHABAN: That's correct. I think Section c of

8-12a should just go away because by -- because, you know, the proposed language I think is a good faith attempt to try and bring, you know, Title 7-101 back in. But like I said before, there's no -- by doing it and then adding reasonable attorney's fees, well, you're changing one standard for another standard. You're trying to track the language as opposed to just default to the language. And by defaulting to the language is no -- it's not vague at all. It's a bit more certainty to it. So, my suggestion would be to strike Section c altogether. That would be my proposal.

REP. SMITH: Thank you. And thank you, Mr. Chairman.

SENATOR CASSANO: Other questions?

Seeing none, thank you very much for your testimony.

REP. SHABAN: Thank you.

SENATOR CASSANO: Gayle Weinstein, First Selectman from Weston. And then Britta Lerner from P & Z Weston.

GAYLE WEINSTEIN: Good morning. (Inaudible).

SENATOR CASSANO: Thank you.

Questions? Questions?

You hit it on the head. We're all wondering where it came from in the beginning. Appreciate your testimony, particularly in behalf of (inaudible) as well. Thank you.

Britta? Followed by Representative Berger and

Lieutenant Dan LaVer or Laver and Mike Gilmore.

BRITTA LERNER: Thank you, Mr. Chair, Madam Co-Chair, ranking members. Thank you for the opportunity to speak. For the record, my name is Britta Lerner and I'm a Commissioner on the Weston Planning and Zoning Commission. I'm here to read testimony into the record regarding Senate Bill Number 263, an act concerning liability zoning enforcement officers. This testimony comes directly from the South Western Municipal Planning and Zoning directors, specifically Jeremy Ginsberg of Darien, Diane Fox of Greenwich, Steve Kleppin of New Canaan, Michael Green of Norwalk, Norman Cole, Stamford, Tracy Kolkowski of Weston, Larry Bradley of Westport, and Bob Nerney of Wilton.

Ladies and gentlemen of the Planning and Development Committee, the eight municipal planners representing the towns and cities of the southwestern region of Connecticut collectively unite to comment on Senate Bill Number 263 which relates to the liability of the zoning enforcement officers described in Section 8-12a(c) of the General Statutes of Connecticut. With personal liability assessed at a monetary figure triple the amount of damages, municipalities are reluctant to direct ZEOs to vigorously enforce zoning through the issuance of citations.

The position of the southwestern region municipal planners is clear. ZEOs should not be subject to any amount of personal liability. Senate Bill 263 is laudable in a contempt. Our group supports the concept of holding ZEOs harmless for any financial loss and expense arising from civil actions,

raising the standard for property owners inclined to file litigation against ZEOs from frivolously or without probable cause to maliciously or wantonly and reducing the amount of penalty that could be assessed to ZEOs.

However, we are concerned that simply removing the term "treble" from the 8-12a(c) will result in a threat of penalties that could be limitless rather than achieving the goal of limiting damages to the actual amount levied. The insertion of language pertaining to reasonable attorney's fees further weakens the bill by adding an additional burden to be faced by ZEOs and by municipalities.

Furthermore, ZEOs should not be singled out in a manner that differs from other municipal enforcement officers. Even with the proposed changes to Section 8-12a(c), ZEOs are still unfairly subjected to additional scrutiny that no other enforcement officer is, such as building inspectors, sanitarians, and wetland enforcement officials. This directly contradicts the stated purpose of the bill, which is to provide the same protections to ZEOs as are provide today other municipal employees. ZEOs should not be subject to any amount of personal liability, treble or otherwise.

We strongly appeal to the Connecticut General Assembly to modify Senate Bill 263 by eliminating in its entirety Section 8-12a(c) of the General Statutes of Connecticut.

Thank you.

SENATOR CASSANO: Other questions?

the meeting. And what he described to me seems like it would be a good amendment to what he had before you. Obviously I'd want to see the language, but I encourage you strongly to adopt this bill. It would solve a lot of the issues that are out there and greatly improve that -- the process for all parties in municipalities and developers for this, the financial guarantees that we have to provide.

So, with that, I'd be happy to answer any questions.

SENATOR CASSANO: Questions, Committee members?

Seeing none, thank you.

MARK BRANSE: Thank you very much.

SENATOR CASSANO: Jacob Vincent.

JASON VINCENT: Good morning, members of the Commission. I appreciate the time this morning. My name is Jason Vincent. I'm the President of Connecticut Chapter of the American Planning Association. The majority of our members are municipal planners. I'm here to speak briefly about House Bill 5320. I want to talk a little bit about Senate Bill 263 and House Bill 5315 if that's okay.

Well, what bonding about is risk allocation. And development community is -- those are small businesses. And what has happened is, is that some communities have created bonding that's maybe a little too difficult. This bill tried to correct that. I think it went a little bit too far in doing so, and this is a good opportunity to look back and say, how can we improve upon that process?

You know, if you think about a pendulum, the pendulum for risk management in the past was solely on the developers. We required them to take on all risks. I think this bill moved it a little bit too far towards the municipality, but there's got to be a good balance that's out there. And some of that's through cash bonding or other mechanisms, but not necessarily forcing a specific mechanism on the development community.

Our position statement has been submitted. I think that talks about some of the key points.

On Senate Bill 26 -- 263, excuse me, regarding zoning enforcement, I believe it's critical to remove the treble damages provision. There's no other enforcement agent that works for a municipality that has that same albatross around their neck. And having been a zoning enforcement officer, I can tell you that it dissuades you from taking certain zoning enforcement actions. And would you rather have a police officer be dissuaded from taking an enforcement action or to take the enforcement action? When a zoning enforcement officer is doing work, they're working as a public official. They're working as a law enforcement agent. Hopefully they're sworn in and take an oath to do that job. As long as there is good standard operating procedures in place, that should be enough for that.

And then in terms of the last bill, the number here, Senate Bill -- House Bill 5315, I just want to lend support to any type of electronic filing. I think that makes sense to reduce the paper trail.

So, thank you.

SENATOR CASSANO: Questions, anyone?

David? David Minnick? Carolyn Nadeau is next.

DAVID MINNICK: Thank you very much. My name is David Minnick. I'm the Chairman of the Planning and Zoning Commission. And I first want to thank the Co-Chairs and also Senator Fasano, last year, for meeting with me and also with others on, on the topic of, of this particular bill. And I think it went a long way to making some improvements that needed to be made in terms of fairness. I do, however, want to make some comments on it, and some of them are just -- are language issues.

HB5320
SB263

On the area of the fact that, as was mentioned before by a former or a speaker that spoke before, it, it -- in Section 8-31, it talks about that the timely and adequate completion of any site improvement that will be conveyed to or controlled by the municipality, that language of being -- the municipality controlled or owned is new language. And as has been mentioned before, and I just want to also state that we encourage the, for example, the, the retention basins and other kinds of, of environmental and other issues to be, to be constructed by the developer -- it's on their property -- and then to be maintained by them.

What this language is being so limiting, just for the municipality now if it's going to own it, means that we cannot bond it. So, therefore, we cannot make sure that it's done and our only mechanism, then, is to go to court, and that's not what this is all about. So, we support the issue of not having the language of, of the municipality, but keeping the way that it was before, public

come there. That's the, that's the public purpose behind all of this. And, so, now if you're saying -- so, I'll leave it at that, but we would hope that you would not approve this Section 8-27. It, it, it in essence defeats the whole purpose of the ordinances or the ordinance that we just passed.

I didn't sign up for it, but I just want to support, because I heard from other colleagues today on the, on the section -- on the very last section on your Agenda, which is 263. We certainly support that and, and suggest that all of 8-12a(c) be removed in its entirety.

As an anecdotal comment to that, we were as a town looking to, to enact an ordinance on blight. And one of the discussions was, well, let's give part of this to the zoning enforcement officer. We as a Planning and Zoning Commission said to the subcommittee of our Town Council, please don't do that. Because of this very ordinance, blight almost always is a problem and almost always is heightened neighborhood kind of discussions. And the actions that would be taken against her would be almost certain. So, we -- they decided that they weren't going to pass a blight ordinance in part because of that.

Those are my comments.

SENATOR CASSANO: Good, thank you.

Questions? Senator Fasano.

SENATOR FASANO: Can you -- I get a little confused, and I apologize, under the 8-27. Can you just explain your position again, if I may ask you to do that?

HB5320

OFFICE OF THE MAYOR

RICHARD A. MOCCIA

TESTIMONY OF THE HONORABLE RICHARD A. MOCCIA
TO THE JOINT COMMITTEE OF PLANNING AND DEVELOPMENT
CONCERNING RAISED BILL 263, AN ACT CONCERNING THE LIABILITY OF
ZONING ENFORCEMENT OFFICERS

MARCH 2, 2012

To whom it may concern,

I strongly support any legislation that would repeal Connecticut General Statute §8-12a(c). This is the section of the Connecticut General Statutes which imposes treble damages on a Zoning Enforcement Officer if a citation is found to be frivolous or without probable cause. The City of Norwalk has considered a zoning citation ordinance for many years; however, it has avoided adoption of such an ordinance due to concerns over having to defend numerous treble damages claims by disgruntled alleged zoning violators. I do not know of any other statute which imposes damages against a municipal employee enforcing its ordinances, yet these employees seem to refrain from issuing unnecessary and frivolous citations. Since C.G.S. §8-12a(c) has kept the City of Norwalk from enacting a citation ordinance, the City is forced to bring many civil zoning enforcement actions in Superior Court. We currently have 283 active zoning violation files in various stages of the enforcement process. These zoning enforcement actions are an incredible cost to the City in legal fees and expenses. There is a cost to the residents as well - having to tolerate a zoning violation in their neighborhood for the months, if not years, that the violation continues while the civil action is pending. Having a zoning citation ordinance would be a valuable tool to help our City achieve more zoning compliance.

Thank you for the opportunity to comment.

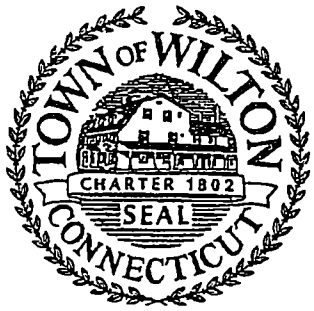
Very truly yours,

Honorable Richard A. Moccia

OFFICE OF THE
FIRST SELECTMAN

Telephone (203) 563-0100
Fax (203) 563-0299

Email to: Bill.Brennan@Wiltonct.org



William F. Brennan
First Selectman

Harold E. Clark
Second Selectman

Ted W. Hoffstatter

Richard J. Dubow

James A. Saxe

TOWN HALL
238 Danbury Road
Wilton, CT 06897

February 29, 2012

Senator Steven Cassano, Co-Chair
Representative Linda Gentile, Co-Chair

Testimony on SB 263, An Act Concerning Liability of Zoning Enforcement Officers

Senator Cassano, Representative Gentile and distinguished members of the Planning and Development Committee, thank you for this opportunity to submit comments on SB 263, An Act Concerning Liability of Zoning Enforcement Officers.

My name is Bill Brennan and I have been First Selectman of the Town of Wilton since 2005. I am also a former Chairman of the Town's Board of Finance.

An inequity exists in Section 8-12a (c) of the General Statutes of Connecticut pertaining to the liability of Zoning Enforcement Officers (ZEOs). Consistent with other municipal enforcement officers, ZEOs should not be subject to any amount of personal liability and expenses due to a civil action resulting from a citation found to be frivolous or without probable cause.

To rectify the current statute, I respectfully urge the complete elimination of Section 8-12a (c), which would place ZEOs on an equal footing with other municipal enforcement officials.

This course of action would be an effective solution and be better than modifying the current language, which shifts the burden to the municipalities to assume the risk and in essence, becomes another unfunded mandate!

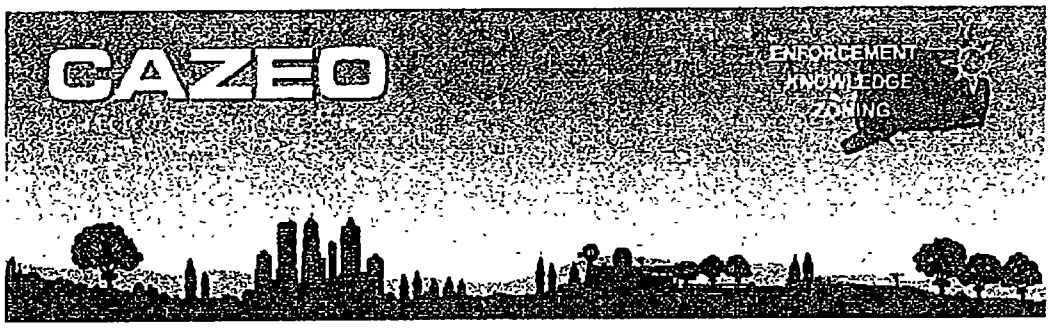
My experience with our land use officials indicates that they conscientiously perform their responsibilities. It is unfair to hold these officials to a higher standard and personal financial risks than others. Consequently, I urge the Planning and Development Committee to completely eliminate Section 8-12a (c).

Thank you again, for allowing me to submit this testimony.

Sincerely,

William F. Brennan

William F. Brennan
First Selectman, Town of Wilton



March 1, 2012

Planning and Development Committee
Legislative Office Building
Hartford, CT 06106

RE: SB-263, An Act Concerning Liability of Zoning Enforcement Officers
Public Hearing - March 2, 2012

Dear Committee Members:

I write to you on behalf of the Connecticut Association of Zoning Enforcement Officials (CAZEO) CAZEO, a voluntary professional association, was formed in 1979 to promote comprehensive zoning enforcement policies in the state. Recognizing that zoning officials require special study, knowledge, and skills a formal certification process was established in 1982. Initially, the certification program was administered through the Institute of Public Service at the University of Connecticut and is now administered through Central Connecticut State University. Eligibility for certification as a Zoning Enforcement Officer requires the successful completion of 60 rigorous class hours, passing of three exams, and completion of a formal case-study that is subject to peer-review through CAZEO's Certification Committee. Furthermore, CAZEO conducts frequent monthly forums to exchange pertinent information concerning zoning and zoning enforcement to assist in solving municipal zoning matters and to promote ethical performance standards.

Annual membership represents over 100 Connecticut municipalities and averages 250 individual members. Since formal certification was established, at least 400 certifications have been administered. CAZEO certification is recognized to produce qualified, objective, and principled professionals. And, today, in almost every Connecticut municipality authorities require their zoning officials to be CAZEO certified

With that said and given the administrative remedies already provided for by the Connecticut General Statutes (CGS) to a person aggrieved by a decision made by a zoning official (CGS §8-7 Appeals to board. Hearing. Effective date of exceptions or variances; filing requirement), I strongly urge you to support proposed SB-263, to eliminate the term "treble" from the language of CGS §Section 8-12(a)

CAZEO is committed to providing a quality certification process to assist Connecticut communities with zoning matters in a professional, ethical, and responsible manner.

Thank you in advance for your consideration.

Best regards,

Lisa M. Houlihan, CZEO
CAZEO President

From: Stephan Grozinger
Sent: Tuesday, February 28, 2012 4 39 PM
To: Sen Boucher, Toni, Sen McKinney, John
Cc: 'John Shaban'
Subject: Senate Bill 263

Senators Boucher and McKinney

I understand the Planning & Development Committee has scheduled a public hearing on Friday, March 2nd on Senate Bill 263.

Senate Bill 263 reads as follows. (c) Any zoning enforcement officer who issues a citation pursuant to an ordinance adopted under this section shall be liable for damages and reasonable attorney's fees in any civil action if the court finds that such citation was issued maliciously or wantonly. Each municipality shall, in accordance with section 7-101a, protect and save harmless any zoning enforcement officer of such municipality from financial loss and expense arising out of such civil action.

The text of Sec. 7-101a is reproduced below. Please note that the proposed bill is internally inconsistent. It states that a municipality must indemnify the ZEO from losses associated with his malicious and wanton acts, "in accordance with section 7-101a", while section 7-101a states that the ZEO must reimburse the municipality if he or she is found to have acted maliciously, wantonly or willfully. I suspect the drafters meant to say the ZEO must be indemnified notwithstanding the provisions of section 7-101a.

> Sec. 7-101a. Protection of municipal officers and municipal employees from damage suits. Reimbursement of defense expenses. Liability insurance. Time limit for filing notice and commencement of action. (a) Each municipality shall protect and save harmless any municipal officer, whether elected or appointed, of any board, committee, council, agency or commission, including any member of a local emergency planning committee appointed from such municipality pursuant to section 22a-601, or any municipal employee, of such municipality from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, suit or judgment by reason of alleged negligence, or for alleged infringement of any person's civil rights, on the part of such officer or such employee while acting in the discharge of his duties.
>
> (b) In addition to the protection provided under subsection (a) of this section, each municipality shall protect and save harmless any such municipal officer or municipal employee from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand or suit instituted against such officer or employee by reason of alleged malicious, wanton or wilful act or ultra vires act, on the part of such officer or employee while acting in the discharge of his duties. In the event such officer or employee has a judgment entered against him for a malicious, wanton or wilful act in a court of law, such municipality shall be reimbursed by such officer or employee for expenses it incurred in providing such defense and shall not be held liable to such officer and employee for any financial loss or expense resulting from such act.
>
> (c) Each such municipality may insure against the liability imposed by this section in

any insurance company organized in this state or in any insurance company of another state authorized to write such insurance in this state or may elect to act as self-insurer of such liability.

(d) No action shall be maintained under this section against such municipality or employee unless such action is commenced within two years after the cause of action therefor arose nor unless written notice of the intention to commence such action and of the time when and the place where the damages were incurred or sustained has been filed with the clerk of such municipality within six months after such cause of action has accrued.

(e) For the purposes of this section "municipality" means any town, city, borough, consolidated town and city, consolidated town and borough, district, district department of health, or authority established by the general statutes, a special act or local law, ordinance or charter or any public agency.

Thanks for your time

Stephan Grozinger

Stephan B. Grozinger, Esq
249 Lyons Plain Road
Weston, Connecticut 06883
t (203) 227-7813
f (203) 227-7948
sbgrozinger@gmail com

This message may contain PRIVILEGED AND CONFIDENTIAL INFORMATION If you are not the intended recipient, do not read, copy or distribute the email or any attachments Instead, please notify the sender and delete the email and any attachments Thank you

Making Great Communities Happen

Connecticut Chapter of the American Planning Association

Government Relation Committee

Chair: Christopher S Wood, AICP Phone: 203 558-0654 govrel@ccapa.org www.ccapa.org

POSITION STATEMENT

PLANNING AND DEVELOPMENT COMMITTEE – MARCH 2, 2012

BILL: SB 263 – An Act Concerning Liability of Zoning Enforcement Officers

CCAPA POSITION

CCAPA strongly supports SB – 263 to revise CGS Section 8-12a. This proposal has been raised in the General Assembly several times over the past six years and no public comments on the concept have identified any specific examples of abuse of authority by zoning enforcement officers. CCAPA believes the treble damages clause is unnecessary and counterproductive to efficient and effective zoning regulations enforcement.

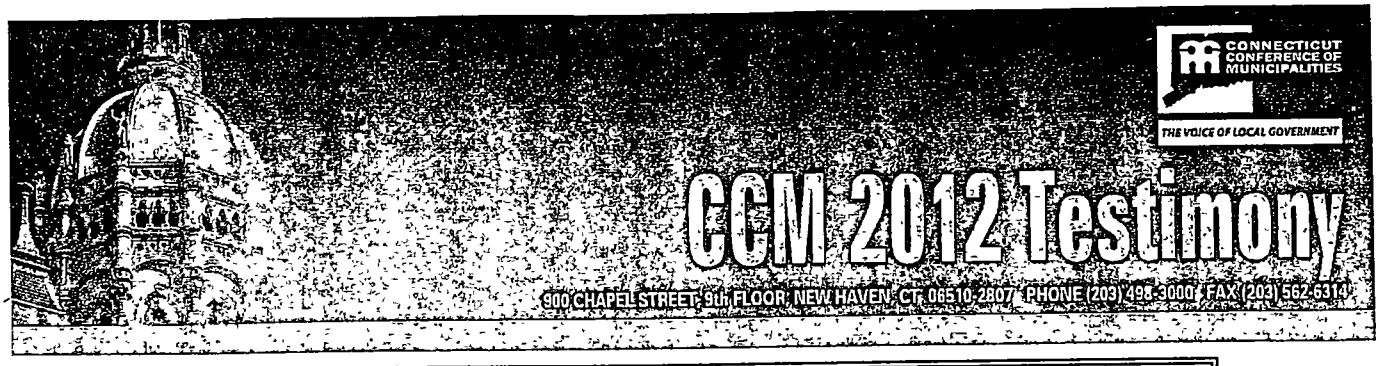
OVERVIEW

SB 263 would amend Connecticut General Statutes Section 8-12a to remove the treble damages liability of zoning enforcement officers for issuance of a citation found by the court to be issued "maliciously or wantonly". The bill retains ZEO liability, including attorney's fees, for such malicious or wanton issuance of a citation, but requires that municipalities indemnify a ZEO from financial loss or expense arising from such court action.

ANALYSIS

This issue has been proposed, debated, revised, but not acted on for at least the past six years. The records of the legislature's consideration of this concept provide ample support and justification for the revision.

Currently, the General Statutes provide a comprehensive procedure intended to ensure effective enforcement of regulations while protecting the rights of property owners. Any decision of an enforcement officer may be appealed to a Zoning Board of Appeals, under Section 8-7. The decision of that board may be appealed to court in accordance with Section 8-8, which may result in a mediation process defined in Section 8-8a. Where an ordinance is adopted to establish a violation penalty procedure, the imposition of any fine is in accordance with the hearing procedures established by Section 7-152c, which such action can be appealed to court. Ample safeguards are in place to prevent abuse of the process by enforcement officers.



PLANNING AND DEVELOPMENT COMMITTEE

March 2, 2012

The Connecticut Conference of Municipalities (CCM) is Connecticut's statewide association of towns and cities and the voice of local government - your partners in governing Connecticut. Our members represent over 90% of Connecticut's population. We appreciate the opportunity to testify on bills of interest to towns and cities.

S.B. 263, "An Act Concerning Liability of Zoning Enforcement Officers."

CCM supports this bill.

S.B. 862 would provide for more creative land use practices by eliminating the penalty of treble damages against zoning enforcement officers for frivolous or without probable cause citations.

This bill would make state statutes consistent with those concerning inland wetlands and watercourse procedures. No other public official is singled out for such punitive actions.

CCM urges the committee to favorably report this bill.

★ ★ ★ ★ ★

If you have any questions, please contact Ron Thomas at rthomas@ccm-ct.org or (203) 498-3000.

Brita Lerner for Gayle Weinstein

SWRPA
South Western Regional Planning Agency

SOUTH WESTERN REGION
METROPOLITAN PLANNING ORGANIZATION

888 WASHINGTON BOULEVARD • STAMFORD, CT 06901 • (203) 316-5190 • FAX (203) 316-4995

March 2, 2012

TESTIMONY OF GAYLE WEINSTEIN, FIRST SELECTMAN OF WESTON, CT AND CO-CHAIR OF THE JOINT SWRPA/SWRMPO LEGISLATIVE POLICY COMMITTEE

RE: **Raised Bill No. 263 – An Act Concerning Liability of Zoning Enforcement Officers**

Members of the Planning & Development Committee:

I am Gayle Weinstein, First Selectman from the Town of Weston, and today I represent the eight municipalities that make up the South Western Regional Planning Agency and the associated Metropolitan Planning Organization: Stamford, Greenwich, Norwalk, Darien, New Canaan, Westport, Wilton and Weston. Written testimony has also been submitted independently from Norwalk Mayor Richard Moccia, Wilton First Selectman William Brennan and from the Town Planners in our eight municipalities.

Thank you for giving me the opportunity to present testimony on Raised Bill No. 263, An Act Concerning Liability of Zoning Enforcement Officers. We truly applaud and completely support the intent of this legislation, "To provide the same protections to zoning enforcement officers as are provided to other municipal employees." Since 2006, the South Western Region has identified the elimination of ZEO liability as stated in Section 8-12a(c) of the Connecticut General Statutes as a top legislative priority.

We strongly believe that Zoning Enforcement Officers should not be subject to an additional penalty that is not applied to building inspectors, sanitarians, or wetland enforcement officers. In fact, this has a negative impact on the ability of the ZEO to properly do his or her job and prevents many municipalities from instituting citation ordinances.

Citation ordinances do provide municipalities with a cost effective tool to pursue enforcement matters. Pursuing fines in court is costly and takes a great deal of time. It should also be noted that

the citation ordinances contain due process and procedural protections for property owners against abuses by zoning enforcement officers. For example, the Town of Weston's ordinance provides for a notice to the person cited that explains the violations and that person may request a hearing before a Hearing Officer The ZEO is required to attend that hearing and explain the citation. The Hearing Officer may dismiss the case if he determines the person who received the citation is not liable. If the Hearing Officers finds that that person is liable, that person may appeal to court.

SB 263, while a good-faith attempt to modify a law that unfairly targets Zoning Enforcement Officers (ZEOs), does not go far enough in modifying Section 8-12a (c) to ensure that ZEOs are treated in the same manner as other municipal enforcement officers. Removing the word "treble" but adding "reasonable attorney fees" does not prevent the ZEO from being held personally liable, and may be a distinction without a difference in terms of the statutes impact Changing "frivolously or without probable cause" to "maliciously and wantonly", does raise the standard somewhat for those property owners inclined to file litigation against the ZEO, but it does not provide the same protections to zoning enforcement officers as are provided to other municipal employees .

Similar proposals have been raised over the past five years. I cannot find any public comments or any specific examples of abuse of authority by zoning enforcement officers. In fact, no one even seems to know the origin or the impetus for the inclusion of this legislation.

Since the proposed language of SB 263 does not match the intent to provide the same protections to zoning enforcement officers as are provided to other municipal employees, and since there are other mechanisms in place to protect home owners from malicious or frivolous citations issued by Zoning Enforcement Officers, the SWRPA and SWRMPO urge the Planning and Development Committee to modify the language of SB 263 to eliminate Section 8-12a(c) of the Connecticut General Statutes.

Respectfully submitted,

Gayle M. Weinstein
Robert M. Byrnes
Co-Chairs, Joint South Western Regional Planning Agency/South Western Regional Metropolitan Planning Organization Legislative Policy Committee

State of Connecticut

HOUSE OF REPRESENTATIVES
STATE CAPITOL

REPRESENTATIVE JOHN T. SHABAN
ONE HUNDRED THIRTY-FIFTH ASSEMBLY DISTRICT

LEGISLATIVE OFFICE BUILDING
ROOM 4200
HARTFORD, CT 06106-1591

TOLL FREE. (800) 842-1423
CAPITOL: (860) 240-8700
HOME (203) 664-1015
EMAIL: John.Shaban@housegop.ct.gov

MEMBER
ENVIRONMENT COMMITTEE
FINANCE, REVENUE AND BONDING COMMITTEE
JUDICIARY COMMITTEE

March 2, 2012

From: Representative John T. Shaban

Re: SB 263- AN ACT CONCERNING LIABILITY OF ZONING ENFORCEMENT OFFICERS.

I would like to thank the Honorable Co-Chairs Senator Steve Cassano and Representative Linda Gentile, the Honorable Vice Chairs Senator Eric Coleman and Representative Audin Grogins, and the Ranking Members Senator Leonard Fasano and Representative Bill Aman, and the entire membership of the Planning and Development Committee for their time this morning.

I offer testimony both in support of SB 263, and to offer a revision to the language that would further the goal of the bill.

Under current law, Zoning Enforcement Officers are subject to a set of rules distinct from similarly situated municipal employees. Pursuant to Conn Gen Stat. §8-12a, a ZEO who issues a municipal citation under §8-12a(a) can be subject to civil suit and treble damages if "the court finds that such citation was issued frivolously or without probable cause."

At the same time, under Conn Gen Stat. §7-101a (a), municipalities must protect and hold harmless employees sued for negligence and/or civil rights violations in the performance of their duties. Under §7-101a(b), however, the employee must reimburse the municipality if the employee has committed an *ultra vires* act or been found to have acted in a "malicious, wanton or willful" fashion in the performance of their duties.

The two sections thus create two standards for ZEOs, and expose ZEOs to greater liability than any other municipal officer. This is unfair and counter productive because the increased (and uncertain) exposure has a chilling effect on ZEOs' activities and has prevented many municipalities from instituting needed citation ordinances.

SB 263 tries to rectify this issue by removing the treble damages provision and the different liability standard and replacing it with language that tracks §7-101a(b). While this approach would be a positive step, the better approach would be to strike §8-12a(c) in its entirety. By default, ZEOs would thereby fall back under §7-101a by operation of law. Indeed, as written, SB 263 could be interpreted to create a new and unintended standard for ZEOs – *to wit*, under the new law could ZEOs now only be found liable for malicious and wanton conduct, and/or are ZEO's now liable for a plaintiff's attorney's fees? The confusion is unnecessary. I urge your full support on SB 263 and the revised language I have outlined.

Thank you for your consideration. Should you have any questions please do not hesitate to contact my office.

Regards,

John T. Shaban
State Representative, 135th District

Town of Westport
Planning & Zoning Commission
Town Hall, 110 Myrtle Avenue
Westport, CT 06880
(203) 341-1030 Facsimile (203) 454-6145

SB 263

MEMORANDUM

TO: The Connecticut General Assembly

FROM: Laurence Bradley, AICP - Planning & Zoning Director

DATE: March 1, 2012

SUBJECT: Comments regarding CGS 8-12a (c)

As the Planning & Zoning Director for the Town of Westport I am responsible for the enforcement of the Zoning Regulation. We have two Zoning Officials on staff, who on a daily basis undertake the job of insuring that the Zoning Regulations of the Town are followed. CGS 8-12a (c), commonly known as the "treble damages" clause does not make our job any easier and thus it should be stricken from the statutes entirely.

The Town of Westport adopted a Zoning Citation Ordinance in 2007 and since that time we have used it as method to gain compliance for zoning violations. As the senior manager for the department, I or my Deputy Director must co-sign all zoning citations that are issued. In five years, over 30 such citations have been issued and I have never seen one that was issued "frivolously or without probable cause "

Prior to adopting our ordinance our Town Attorney's office researched cases brought under this section Since 1992 when it was first enacted, they could only find a single case where a Zoning Enforcement Officer (ZEO) was accused of violating this statute and the case was decided in favor of the ZEO

ZEO's are the only municipal official subject to a special penalty provision for doing their jobs If a ZEO acted without probable cause they could be held liable even without 8-12a (c) It would seem that this provision is only there to intimidate a ZEO from enforcing the zoning regulations. In discussions with some of my fellow local Planning & Zoning colleagues, I know that some of them have refused to issue citations or even adopt an enforcement ordinance because they are fearful about the threat of "treble damages."

I urge you to eliminate this section entirely, as past efforts that simply eliminate the word "treble" could be construed as have no limit on the level of damages that could be levied

Thank you for your attention to this matter

S - 641

CONNECTICUT
GENERAL ASSEMBLY
SENATE

PROCEEDINGS
2012

VOL. 55
PART 6
1633 – 1960

Thank you, Madam President.

Through you, I do not believe so. That is not the intent of this bill. The -- it was -- it's more in line with someone actually physically destroying or desecrating a memorial. The takings of a flag in -- in -- basically in memorance of -- for that person I would propose or suppose I don't think that would be the course for this -- for this bill.

Through you, Madam President.

THE CHAIR:

Senator Witkos.

SENATOR WITKOS:

Thank you, Madam President.

I just wanted to put that on the record for Legislative intent.

Thank you very much.

THE CHAIR:

Thank you, sir.

Will you remark further?

SENATOR LEONE:

Thank you, Madam President.

With that I would put this on Consent.

THE CHAIR:

Seeing no objection so ordered.

Mr. Clerk.

THE CLERK:

On page 27, Calendar 83, Substitute for Senate Bill Number 263, AN ACT CONCERNING LIABILITY OF ZONING

ENFORCEMENT OFFICERS, favorable report of the Committee on Judiciary.

THE CHAIR:

Senator Cassano.

SENATOR CASSANO:

Good afternoon, Madam President.

THE CHAIR:

Good afternoon, sir.

SENATOR CASSANO:

I move acceptance of the Joint Committee's favorable report and passage of the bill and waive its reading and seek to summarize.

THE CHAIR:

Acting on approval of the bill, please proceed, sir.

SENATOR CASSANO:

Thank you.

This is a -- a bill that we had last year, was passed unanimously last year and died on the House floor. It's back again in the same form, AN ACT CONCERNING LIABILITY OF ZONING ENFORCEMENT OFFICERS. Zoning enforcement officers are the only one that have treble damages when they make decisions, whether they be in poor taste or -- or whatever, they are personally responsible and it's the only town employee, municipal employee, that has this hanging over them.

There is much testimony from municipalities in favor of this bill which would eliminate those treble damages and treat them as -- as any other municipal employee and there were, in fact, several examples given that these zoning enforcement officers, in many cases, are reluctant to make decisions because they are personally liable for those decisions.

So I would urge passage of the bill.

THE CHAIR:

Will you remark?

Senator Duff.

SENATOR DUFF:

Thank you, Madam President.

Madam President, I just want to echo the statements of Senator Cassano and thank him for his hard work. This is an issue very important to our municipalities. As a matter of fact when we had a -- the breakfast at the Southwestern Regional Planning Association it's one of their priority bills and I appreciate his hard work.

I hope this year that the House will also see the wisdom in this bill and that we can get greater enforcement from our municipalities because I know that many of them are very concerned about the treble damages issue.

So again I -- I commend Senator Cassano for his hard work on this and look forward to this hopefully becoming a law this year.

Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark?

Senator Leone.

SENATOR LEONE:

Thank you, Madam President.

I also would like to urge my support on this bill and echo the comments Senator Duff and Senator Cassano. As mentioned this is important to the municipalities and especially to the zoning off -- officers that have

to go out and enforce the zoning rules and ordinances and because they were sometimes to be held accountable for just doing their job it could, in fact, cause them to be fearful of doing that and this would eliminate that -- that fear and enable them to do the job that they were tasked to do.

So I would urge support and think it's a -- a great bill and ought to pass.

Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

Senator McKinney.

SENATOR McKINNEY:

Thank you.

Madam President, if I could, just one question to the proponent of the legislation.

THE CHAIR:

Please proceed, sir.

SENATOR McKINNEY:

And -- and I -- and I rise in support of it but we -- we are removing the -- the personal liability for zoning enforcement officers for treble damages. But just for -- for the record and for my understanding, through you, Madam President, zoning enforcement officers still may have liability. The issue is that their liability, if it's deemed that they've acted frivolously, et cetera, would be no different than the liability of any other municipal employee, is that correct?

Through you, Madam President.

THE CHAIR:

Senator Cassano.

SENATOR CASSANO:

Yes, that is correct.

SENATOR McKINNEY:

Great, thank you sir.

THE CHAIR:

Thank you.

Will you remark further? Will you remark further?

If not --

SENATOR CASSANO:

If no objection, I'd ask that it be put on the Consent Calendar.

THE CHAIR:

Seeing no objection so ordered.

Mr. Clerk, will you call the bill that been put on hold?

THE CLERK:

On page 30, Calendar 134, Senate Bill Number 289, AN ACT CONCERNING THE ESTABLISHMENT OF TOLLS FOR THE EXTENSION OF ROUTE 11. Senate B has been designated.

THE CHAIR:

Senator Markley -- I'm sorry, Senator Maynard.

SENATOR MAYNARD:

That's quite all right, Senator -- I mean.

THE CHAIR:

Bill 5096; on page 9, Calendar 3 -- 312, Senate Bill Number 114; page 11, Calendar 327, Senate Bill Number 378; page 13, Calendar 344, Senate Bill Number 143. Also on page 13, Calendar 343, Senate Bill 116; page 14, Calendar 350, Senate Bill Number 198; page 26, Calendar 74, Senate Bill Number 196. On page 27, Calendar 83, Senate Bill Number 263. On page 31, Calendar 184, Senate Bill Number 94; page 31, 1 -- Calendar 166, Senate Bill Number 62. Also on page 31, Calendar 167, Senate Bill 64; page 32, Calendar 185, Senate Bill 190; page 33, Calendar 220, Senate Bill 351.

THE CHAIR:

Are those all the bills on the -- oh, Agenda 3, sir. The last one on Agenda 3. I think it --

Senator Looney.

SENATOR LOONEY:

Just wanted to -- just to reconfirm that the item from Senate Agenda Number 3 --

THE CHAIR:

Was not called.

SENATOR LOONEY:

-- is on the Consent Calendar that we had taken up under suspension, substitute House Bill Number 5445.

THE CLERK:

Yes, sir.

THE CHAIR:

Thank you.

Are there any questions?

If not, Mr. Clerk, I will call for a roll call vote. Will you call for a roll call vote and I'll open the machine for the Consent Calendar.

THE CLERK:

Immediate roll call has been ordered in the Senate. Senators please return to the Chamber.

Immediate roll call has been ordered in the Senate.

THE CHAIR:

Have all members voted? Have all members voted. The machine will be closed. And, Mr. Clerk, will you call the tally on the Consent Calendar, please.

THE CLERK:

On today's Consent Calendar,

Total number voting		35
Necessary for Passage		19
Those Voting Yea	35	
Those Voting Nay	0	
Those absent and not voting		1

THE CHAIR:

Consent Calendar passed.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President. Madam President, would move for a suspension for immediate transmittal to the Governor of Substitute House Bill Number 5445, AN ACT CONCERNING SUPPLEMENTAL PAYMENTS UNDER THE CONNECTICUT ENERGY ASSISTANCE PROGRAM, which was just adopted as part of our Consent Calendar.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.