

Legislative History for Connecticut Act

PA 14-67

HB5219

House	3127-3129	3
Senate	3157, 3163-3164	3
Judiciary	936-957, 1094-1095, <u>1292-1296</u>	29
		35

H - 1190

**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2014**

**VOL.57
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3044 - 3394**

Those absent and not voting 9

SPEAKER SHARKEY:

The bill as passes in concurrence with the
Senate.

Will the Clerk please call Calendar 358?

THE CLERK:

On page 20, Calendar 358, favorable report of the
joint standing committee on Judiciary, House Bill
5219, AN ACT CONCERNING MAINTENANCE OF PRIVATE
EASEMENTS AND RIGHT OF WAY.

SPEAKER SHARKEY:

Representative Fox.

REP. FOX (146th):

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

SPEAKER SHARKEY:

The question is on acceptance of the joint
committee's favorable report and passage of the bill.

Will you remark, sir?

REP. FOX (146th):

Thank you, Mr. Speaker.

What this bill does is it makes it clear that the
owner of a property that benefits from a private

easement is responsible for the cost to maintain the easement as well as any -- to restore any damage to the easement or right of way. It makes the owner of the benefit property who damages either directly or indirectly the easement or right of way to pay for the cost of those damages and establishes a claim for either specific performance or a contribution that can be brought in Superior Court. It's a bill that passed Judiciary Committee unanimously, and it was supported by land use attorneys as well as the Bar Association. I would urge my colleagues to support this bill.

SPEAKER SHARKEY:

Thank you, sir.

Would you care to remark further on the bill that's before us?

Representative Smith.

REP. SMITH (108th):

Mr. Speaker, thank you. I urge the chamber to support this bill. It's going to help make this title more marketable and help get some loans approved for our borrowers. So, this a good bill -- (inaudible) law to pass.

SPEAKER SHARKEY:

Thank you, sir.

Would you care to remark? Would you care to remark further on the bill before us? If not, staff and guests to the well of the House. Members take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll.

The House of Representatives is voting by roll. Will members please return to the chamber immediately?

SPEAKER SHARKEY:

Have all the members voted? Have all the members voted? Will members please check the board to make sure your vote is properly cast?

If all the members have voted, the machine will be locked and the Clerk will take a tally.

Clerk please announce the tally?

THE CLERK:

House Bill 5219.

Total number voting	141
Necessary for passage	71
Those voting Yea	141
Those voting Nay	0
Those absent and not voting	10

SPEAKER SHARKEY:

The bill passes.

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CONNECTICUT
GENERAL ASSEMBLY
SENATE**

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vd/gbr
SENATE

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May 6, 2014

Next, Madam President, Calendar page 12, Calendar 426, House Bill 5023, move to place on the Consent Calendar.

Then Calendar page 20, Calendar 498, House Bill 5467, move to place on the Consent Calendar.

And Calendar page 24, Calendar 526, House Bill 5556, move to place on the Consent Calendar.

Also Calendar page 24, Calendar 524, House Bill 5219, move to place on the Consent Calendar.

Calendar page 25, Calendar 530, House Bill 5368, move to place on the Consent Calendar.

Calendar, page 29, Calendar 554, House Bill 5148, move to place on the Consent Calendar.

Calendar page 31, Calendar 567, House Bill 5229, move to place on the Consent Calendar.

Calendar page 31, Calendar 565, House Bill 5028, move to place on the Consent Calendar.

Calendar page 42, Calendar 384, Senate Bill 442, move to place on the Consent Calendar.

And if we might stand at ease for a moment, Madam President, to mark additional items.

THE CHAIR:

Stand at ease. The Senate will stand at ease.

(Chamber at ease).

THE CHAIR:

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.. Additional items, Madam President -- we might stand at ease for just a moment.

vd/gbr
SENATE

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May 6, 2014

And on page 22 Calendar 513, House Bill 5353.
Calendar 515, House Bill 5361.

And on page 24, Calendar 526, House Bill 5556.
Calendar 524, House Bill 5219.

Page 25, Calendar 4. -- sorry, Calendar 530, House Bill 5368,
page 27, Calendar 546, House Bill 5061.
Calendar 543, House Bill 5037.

On page 28, Calendar 550, House Bill 5514.

Page 29, Calendar 554, House Bill 5148.

Page 30, Calendar 563, House Bill 5554.

Page 31, Calendar 567, House Bill 5229. Calendar 565,
House Bill 5028.

And on page 42, Calendar 384, Senate Bill 442.

THE CHAIR:

Senator Looney, do you have any more good news for us?

SENATOR LOONEY:

Yes, thank you, Madam President. One additional item
to add before we call for the actual vote on the
Consent Calendar, and that is item an Calendar page
33, Calendar 575, House Bill 5359. With that one
addition it would call for a vote on the Consent
Calendar.

THE CHAIR:

Mr. Clerk, please call for a vote on the Consent
Calendar, and the machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate.
Immediate roll call on the second Consent Calendar
today has been ordered in the Senate.

THE CHAIR:

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If all members have voted? All membered voted, the machine will be closed. Mr. Clerk, will you please call the tally.

THE CLERK:

On the second Consent Calendar for today.

Total number voting	35
Those voting Yea	35
Those voting Nay	0
Absent not voting	1

THE CHAIR:

Consent Calendar passes. Senator Looney.

SENATOR LOONEY:

Thank you, Madam President. If the Clerk would call the first item marked go to follow the Consent Calendar.

THE CHAIR:

Mr. Clerk.

THE CLERK:

On page 33, Calendar 579, Substitute for House Bill Number 5348, AN ACT CONCERNING THE PAYMENT OF DELINQUENT PROPERTY TAXES. Favorable Report of the Committee on Planning and Development.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Thank you. Thank you, Madam President. Pursuant to Rule 15 of the Joint Rules, I am recusing myself from consideration of this bill.

THE CHAIR:

Thank you, sir. Please leave the Chamber.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 3
886 – 1483**

2014

RAYMOND YAMIN: Chairman Coleman and Chairman Fox and members of the Committee. My name is Raymond Yamin. I'm an attorney at law in private practice in the City of Danbury. I'm also a resident of the City of Danbury.

I'm here to speak in favor of House Bill 5219
AN ACT CONCERNING MAINTENANCE OF PRIVATE
EASEMENTS AND RIGHTS OF WAY.

By way of background, I've been practicing about 33 years and my practice heavily emphasizes residential real estate, so in the course of my practice, what I've run into quite often is a situation where you have private rights of way that for whatever reason a developer has never recorded a written maintenance agreement. Sometimes it's just a few homes on a long driveway. Sometimes it's an entire neighborhood.

And I don't know how many properties are in that situation in Connecticut but if I had to extrapolate from my personal experience in the Danbury region, I would say there's probably at least tens of thousands of properties in the State of Connecticut.

In the past when we ran into this issue, you know, the secondary market always had issues with lack of these agreements, but in the past they weren't very strict about enforcing it. Sometimes you'd just get a letter from a town that said the town voluntarily happens to plow this road and that would make a lender happy.

Well, the lending world has changed entirely in recent years since the mortgage crisis and now Fannie Mae and Freddie Mac enforce rules very strictly and their rule is, their guideline is that they don't want to buy a loan where the property does not have an enforceable written recorded maintenance agreement unless the

lender indemnifies Fannie Mae against any loss as a result of that lack.

Well, the reality is that lenders are not going to indemnify Fannie Mae. They're just not going to make the loan. That's the way lending is today. It's basically paint by numbers. You either check the box or there's no loan. Nobody makes a discretion or decision. There's no risk taking and Fannie Mae is the giant in the environment that pretty much governs what's going on.

So what you have is a situation where you don't find as many opportunities to get around this issue and the property becomes relatively unmarketable.

The few times you see lenders working around it might be when the lender is going to portfolio the loan. Let's say it's a small local lender. Not a lot of lenders portfolio loans and the ones that do portfolio are with large down payments, generally, so that rules out most buyers.

So the primary reason for this legislation is to cure an issue with the marketability of the properties in terms of financing. If the properties can't be financed by the majority of lenders, then that homeowner is going to get a lower sale price when they eventually find somebody who can either pay cash or find a lender that's going to portfolio the loan, et cetera.

The second issue, the second rationale for the statute is simply to cure the issue for the property owners themselves. Somebody, I have buyers all the time, they come, they're buying a property that there's three houses on the street and I say to them, by the way there's no maintenance agreement and they say, well, what

does that mean? And I say, call the sellers and the sellers say, oh, Joe plows the driveway all the time. And the buyer says, gee, I don't feel too comfortable with that. What if Joe moves? You know, who's going to plow the driveway? So you want to remove that uncertainty.

Now you'd think that you could get three or five property owners to agree to sign a maintenance agreement to cure this issue, but in my experience it's extremely difficult to get them to do that. People are just afraid to sign a piece of paper that documents even what they're already doing. I've even had that problem when their own attorney agrees with me that we should do it, still can't get the client to do it.

So it's very difficult to get people to memorialize in writing something that they may have been doing for 20 years, which is informally agreeing to take care of the roads.

So this legislation would, in those situations, fill in the blank. You can't get them to agree, at least there is a backstop. There is a default maintenance obligation, and that cures the issue for the property owners that want to sell their properties and need it to be financed.

That's the general background.

SENATOR COLEMAN: Thank you, Attorney Yamin. First, Senator McLachlan and then Representative Smith.

SENATOR MCLACHLAN: Thank you, Mr. Chairman. Thank you, Attorney Yamin for your persistence on this topic. You brought it to my attention I believe three years ago. If I'm not mistaken you've worked with the Connecticut Bar

Association on this topic in the past and I see they've also submitted testimony in favor of it.

Could you clarify a bit for some who don't understand the portfolio loan business? So if someone's trying to buy a house that is a, buy a property that is affected by the private road issue and doesn't have a memorialized agreement, and I believe you mean a memorialized agreement that's on the land records.

RAYMOND YAMIN: That's correct.

SENATOR MCLACHLAN: Okay. To get a bank to buy the deal and make it a portfolio loan, it's my understanding that needs 25 percent down, generally speaking.

RAYMOND YAMIN: It's going to be something like that, yes. The lender is making a decision that with enough of a down payment and the other qualifications of the borrower, of course, that the lender is comfortable enough that they are going to keep the loan. They're never going to have to worry about selling it into the secondary market and they're willing to take the risk, which is in reality, a very small risk. That's part of the problem.

The risk is small but Fannie Mae makes it a big issue by their guidelines saying we just don't want these loans.

So in reality, there's not a lot of portfolio loans. Most, you know, I couldn't give you the exact numbers but it's probably no more than 10 percent of all the loans originated in the country end up staying home in a lender's portfolio.

SENATOR MCLACHLAN: Thank you. And through you, Mr. Chairman, I recall a situation when I still

served as Chief of Staff to the Mayor in Danbury where there was a small neighborhood that had the Joe with the plow story and it was a resident who lived there for many, many years and then retired to Florida and sold his plow and the new owner didn't have a plow and all of a sudden the residents were knocking on the Mayor's door at the first snowstorm saying, somebody's got to come plow our street. And you know, I think that was worked out.

But the point is that you know, that's a firsthand experience of what can happen in a neighborhood that doesn't have a maintenance agreement.

Is there any other difficulty when you talk about salability? What's the impact? You know, it does seem that a house that qualifies for a government loan with a minimum of down payment is much more saleable than one that requires 25 percent down. What do you suppose could be the impact on the value of the property as a result of that restriction?

RAYMOND YAMIN: Well, again, like I said, in recent years with the ratcheting up of the enforcement of these kinds of provisions, and there's a lot of different things that Fannie Mae and Freddie Mac and the FHA have ratcheted up in the last five years, the impact is substantial.

First of all, you have a reduced number of buyers out there to begin with. As soon as you start knocking off buyers who might be able, would have gone to this lender or this lender or through this program, you're narrowing down the market and you're creating an imbalance of supply and demand.

So, you know, I can't speak with precision about it but my experience is that that is

going to have an impact on the appraisal of the house.

SENATOR MCLACHLAN: Thank you, Attorney Yamin. Just one brief question more, through you, Mr. Chairman, and that is, for those communities and neighborhoods that currently have some type of a written agreement, although it's not recorded on the land records, does this proposed statutory language help that situation? Through you, Mr. Chairman.

RAYMOND YAMIN: Well, I'm not familiar with too many situations where there's a written agreement out there and it's not recorded, but I would say that if there happens to be one, I would say legislation like this would end up incentivizing those homeowners to go ahead and record the agreement.

And since homeowners are free to, even with the legislation, go ahead and write their own agreements, again, this would incentivize them to draft their own if they feel like something more specific to their situation and the legislation would be appropriate.

SENATOR MCLACHLAN: Thank you, Attorney Yamin and thank you again for your persistence on this. I believe that Representative Smith would likely agree with me that our district around Candlewood Lake has many, many properties that are affected by the situation that you've described and in many cases those are properties that are not necessarily the waterfront ones, but that are interior lots and could in many cases be considered affordable homes to purchase. They wouldn't be affordable.

RAYMOND YAMIN: That's absolutely true, Senator. That's very often the case that these are homes in a modest price range and those buyers and

sellers by definition don't have the means to go out and hire an attorney and organize the neighbors and do that sort of thing, and there isn't much time to do that when a transaction occurs, either.

Having this legislation would allow the transaction to go forward without putting it off for six months while the parties try and get the neighbors together.

SENATOR MCLACHLAN: Thank you. Thank you, Mr. Chairman.

SENATOR COLEMAN: Representative Smith and then Representative Serra.

REP. SMITH: Thank you, Mr. Chairman, and Attorney Yamin, I appreciate the fact that you did come up today to testify on this bill. Having practiced in the Danbury area, you and I have had many transactions over the years involving real estate and one recently involving this issue.

Personally, I actually lived on a private road that had this very issue arise many years ago. When I'm not having fun up here, I practice law. Been doing that for 30 years. And I can say, the fact that, you know, you threw a loose number out there probably affecting ten thousand properties. I would submit to this Committee that it's probably hundreds of thousands of properties that are affected.

There are so many private roads not only in New Fairfield, in Sherman, in Danbury, New Milford, but throughout the state that do not have property maintenance agreements, that just kind of go by the old boy network, so to speak, that this is the way we do it. We plow the road. If it needs repairing we maintain it. Everybody chips in at the end of the year.

From personal experience and also from representing clients over the years, I have found that that works sometimes and many times it does not. What often happens is that even if there's no maintenance agreement and there's a loose agreement to everybody chip in, 90 percent of the people will, in fact, do that.

But there are a few property owners for whatever reason, some of the excuses we hear is, well, we're first on the street and why should I pay for the full maintenance?

Or, you know, this is a part-time residence. I generally live out of state and I'm not interested in putting more money into the property.

So these are the types of things that you hear and then you have two or three property owners who are not contributing toward the cost of the maintenance and the plowing and the upkeep of the road although they have full access and the benefit of that.

Now, a property owner could sue and bring an action against those who are not participating but as we all know, that's costly and time consuming and as you said, these are normally people with modest means and simply without the funds.

So I applaud you for coming up today to testify on this, what I believe is a very important issue. Just by putting it in statute, it would make these types of transactions so much more, I guess, so much more easy to deal with in the sense of when you ask someone to go out and get a maintenance agreement signed.

As you indicated in your testimony, it just doesn't happen. People aren't willing to do it, or you always have one or two who are

unwilling to do it, even though the majority of them do.

So the fall back provision by this proposed legislation would allow the parties to look to the statute and say, okay, well the cost and the maintenance and the upkeep will be shared equally.

So I'm in favor of this bill. I hope the Committee asks the appropriate questions here today that we can address and move this forward and thank you for coming up.

RAYMOND YAMIN: Thank you, Representative. It's very gratifying to me to have the opportunity to come up. It's not very often when I get to speak to something that I deal with every day in my practice, my clients deal with very often; so I feel like if a bill like this is passed it's going to solve a very concrete, every-day problem that a lot of communities face and I really don't see much if any downside to it.

I think this is going to help avoid litigation because people can be able to point to this statute and say, or the unreasonable property owner that hold out, the other neighbors can point to it and say, look here's your obligations. They're equitable. And I think that would cause them to contribute what they ought to be contributing. Thank you very much.

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

SENATOR COLEMAN: Representative Serra.

REP. SERRA: Thank you, Mr. Chairman. I heard Representative Smith say over, beyond 100,000. I'm a person who worked in that area for 37 years. I was the guy that got the phone calls when this was happening.

Most of these problems were caused by municipalities, especially their planning and zoning commissions, who allowed some of these projects to go forward. Loose agreements, retention ponds, rights of way, who's responsible after people move and all that.

The biggest argument I used to get was the fact that they pay taxes, like everybody else, and a lot of those homes on these private roads were bigger homes.

I've had situations where a developer would put in a road and it wasn't finished, so there would be what we call a binder and the winter season came in, and it was an issue who was going to plow that road. Accept a city street, the banks got the mortgage. They gave the money for, and we would plow it, even though the road wasn't totally complete.

So maybe, I personally think that maybe this Legislature should start to look at this and since municipalities have allowed this, and I don't know the legal ramifications to how you put it together. Maybe the cities and towns should be taking over this maintenance of these rights of ways. It may be that requiring people to sign off and say that the municipality is going to take care of this, because this issue that everybody described here happens every day, every single day.

Even in my position here, I get phone calls from people who live on these private roads and have these rights of way who ask me since I came out of public works, you know, would you call the public works director, you know. That gentleman sold and moved who used to maintain the right of way in terms of plowing and other things.

So maybe we should be looking at doing away with all this stuff in Connecticut. I know that would probably cause a firestorm in certain areas of the state, but this issue that you described, other than correcting the mortgage part of it, it's going to go on forever with all these rights of way and these rear lots that up until, at least in the town I'm from, up until about 25 years ago did not exist and it was a big issue with public safety and all because we didn't know where these homes were because they were in the rear, in the back and the numbers and all that.

But maybe this Legislature, like this issue with drones, which is new, this is not a new issue but it's become a big issue based on Fannie Mae and these loans. Maybe we should look at it.

It happens all the time where a developer comes in. He's got X company. Next thing, I don't have to tell the lawyers, he changes the name to Y company, but all those easements and the retention ponds and the drainage rights of way were never recorded, and now the municipality is stuck with all this because elected officials will listen to voters bitch because they're votes, even though they really don't want to take it over. And I know, because we've taken over a lot of areas that we should have never taken over because elected officials, and you know, their taxpayers want us to do that.

So this issue is not going away. It's going to get bigger and bigger. You're bringing it to light because of the mortgage aspect of this but this goes on every day in every municipality in the State of Connecticut.

So maybe down the road there should be a task force or the MORE Commission or somebody that should be looking at this.

RAYMOND YAMIN: I'm certainly well aware of the larger issue you're talking about. Yes, this legislation just takes care of one issue. It's certainly the easier issue to tackle.

The one you're talking about, I'm all in favor of what you're, had to deal with it many times in the City of Danbury where neighborhoods were developed. older neighborhoods, roads were not built to current specifications. The town will not accept dedication of those roads. They won't put in storm drains. The road needs to be 50 feet. It's not going to happen.

So I'd be in favor, this is obviously a little (inaudible). I'd be in favor of something like an amnesty for some of those old roads where the town says, were taking care of these roads because we let people, we let 200 homes. We built on them, you know. It's too late to not take care of them. So I would agree with that legislation if it comes along.

REP. SERRA: Just my last comment, Mr. Chairman, and obviously, we all know, all of us that the municipalities allowed this through their planning and zoning or even prior to that. You just don't go in and build a subdivision in any municipality without some approval of some legislative body in that community. So they allowed this and now, you know, we reap the fruits of that and these problems that we have, you know. Thank you, Mr. Chairman.

SENATOR COLEMAN: Representative Baram.

REP. BARAM: Thank you, Mr. Chairman. In looking over the proposed legislation, it looks like it has a lot of merit, but there is one situation

that I find that seems to be omitted from the bill that in my law practice I've dealt with frequently, and that is where you have an easement or a right of way that not only involves residential properties, but commercial properties as well.

I've had situations where you can have a residential development and at the end of the road there's a commercial entity, and the way I read this proposed bill, it would only require the residential properties to share in the maintenance of the road, and that could give a waiver to any commercial entity from participating.

So my question is, would you have any objection if this Committee saw proper to amend this proposed legislation to include commercial entities in addition to residential property?

RAYMOND YAMIN: Well, I have to admit you raised an issue I hadn't thought of and that would certainly make sense from an equitable standpoint that if a commercial property located at the end of the road that they shouldn't have only the residential properties maintaining that road.

You know, any legislation is going to have to be interpreted and with or without this, with or without a bill like this, they're going to, let's say without it, they're going to resort to the common law and equitable doctrines. I think they'll always have that fall back provision even if this doesn't cover it.

I don't see this subsuming the issue entirely, so I mean, I haven't had time to reflect on it but I'd be surprised if they would be completely, if the residential owners would be completely estopped from trying to enforce

contribution by a commercial property owner, even with the existence of this legislation.

REP. BARAM: I certainly understand your perspective but I would hate to risk the opportunity for a judge to conclude that the statute usurp any common law rights and just require the residences along the right of way to share in the cost.

So it would hopefully be my recommendation that this legislation if it goes forward, be amended to include commercial properties as well, but thank you for bringing this to our attention.

RAYMOND YAMIN: Thank you.

SENATOR COLEMAN: Representative O'Neill.

REP. O'NEILL: Yes, thank you. I have a few questions. First off, I don't think it says it anywhere, I've read through this a few times, but the purpose of the statute is to address this Fannie Mae related issue, which I get the impression from reading it and from what you're saying, really relates to access and egress to the property.

I mean, there's references to snow removal and things like that, but this doesn't ever actually say in the bill that it's having to do with or it's mostly aimed at access and egress, so let me just ask. Is that what the purpose of the bill is?

RAYMOND YAMIN: Not really. This bill presumes access. If there's no, in most of these situations, not virtually all of these situations, there is a legal right of access.

The only issue that is not covered, a deeded right of access, or an implied right of access. That issue is taken care of separately but

there is no written agreement for maintaining that access.

So this doesn't attempt to cure that issue and it couldn't. Basically title insurance companies after they do a title search, they insure access, so that sort of takes care of it even in terms of the lending environment.

REP. O'NEILL: But what you're talking about maintaining is a roadway, it sounds like. I mean, it doesn't ever say so explicitly in here but is that what this bill is really all about?

RAYMOND YAMIN: Yeah. It is dealing with the possibility of obstruction of physical access, not legal access. I didn't mean to, maybe that's what you were getting.

Yeah, the ultimate thing that Fannie Mae is concerned with is that the road is maintained so poorly that physical access is blocked.

REP. O'NEILL: Right.

RAYMOND YAMIN: And I've never seen that happen in any case. That's why I said it's an overblown concern on their part.

But in terms of legal access, that is almost always present and insured by the title insurance company.

REP. O'NEILL: Because what this talks about, for example, is easements and rights of way. I'm just focusing on easements. I mean, easements could be for power lines, water lines, sewer lines, a whole bunch of things, not just driveways basically to get to and from property.

This does not limit the application of this bill. It does not limit itself to simply rights of way designed to provide for access or

to support access. It talks about any kind of easement.

So was the intention here to be limited to in effect, driveways, roadways and other methods by which one gets to and from property?

RAYMOND YAMIN: It was definitely directed toward easements for right of way. In Section 1(b) it does say, refer to the owner of a property that benefits from an easement or right of way, the purpose of which is to provide access to such residential real property, so it qualifies it in that paragraph.

REP. O'NEILL: Okay. I'm sorry. I missed that. I'm glad you pointed that out to me.

The second thing I'm wondering about is, that it talks about in the absence of an agreement in (c) the cost of maintaining and repairing or restoring such easement shall be shared by each owner benefitted in proportion to the benefit received by such property.

And I'm just wondering, is that like a term of art? I mean, does that have a pre-existing definition because I'm not really sure.

For example, is the person at the far end, furthest away from the public road the most benefitted or the least benefitted? I mean, how do you assess the proportionate, is it based on road frontage?

RAYMOND YAMIN: There are variations in practice about how, when there are written agreements drawn up, there are variations in practice in terms of how contributions are. Sometimes there's five houses on a road and there's no significant difference. You know, they'll do an equal contribution.

I have seen road maintenance agreements drawn up with the property owner at the farthest end of the road paying a greater share.

I'm not aware of a specific interpretation of proportion to the benefit. I think it's a good term to use for a court to interpret because that's going to leave open the possibility that it will not be simply divided up equally because there are going to be situations where that is not the proportion of benefit.

Let's say you have one home right on the corner at the beginning of the road and then you have 1,000 feet of frontage. It's a farm and the driveway, and 1,000 feet in there's a farmhouse. You wouldn't want a 50/50 contribution in that case, so I think a court would say in proportion to the benefit they're going to go by the distance to the second driveway in determining that.

So is it a grey area? Yeah, but I think it's a good grey area in the sense that you're going to leave courts the opportunity to make an equitable judgment about what the proportion of the benefit is.

And I keep falling back on the thing that this is again, a backup, that the parties, if they have an unusual situation they should come to a written agreement. If they can't, they've got a statute. Either way they're going to end up in court if there's a dispute. This will help. This will not hurt.

REP. O'NEILL: Okay. Thank you.

RAYMOND YAMIN: Thank you.

SENATOR COLEMAN: Are there other members with questions? Representative Adinolfi.

REP. ADINOLFI: Just a question. I recall that quite a few years ago like in my hometown, they don't allow more than three homes on a private road, you know. I'm not talking about developments, because any new developments have to meet the town standards and later will be there.

But I was under the impression that, I don't know whether it's a state law or a law of the municipality that the last house was responsible for the whole driveway as it stands now because as far as like snowplowing, that individual couldn't get out at all, you know, unless he plowed the whole driveway to the road.

RAYMOND YAMIN: I'm not aware of any ordinances or state statutes that actually say that.

REP. ADINOLFI: I think there are some because I know some instances like, I'm thinking of Warren, Connecticut right now, where the last house, to my knowledge, is responsible. This would be great, because, or there could be a problem.

I'm thinking specifically of one place where somebody comes into the road and it's pretty flat for the first two houses but all of a sudden it's going straight up and that road needs a lot of repair and it's not a paved road. It's a dirt road. That you were saying that the person in the first house was responsible to go all the way up the right of way, to, you know, pay for that?

RAYMOND YAMIN: Again, it comes down to that phrase, proportion of benefit. If push came to shove, a court would look at the overall cost of maintenance and I think there would be room given that phrase for the court to say that

more of the costs are essentially associated with one of the houses.

I can't say that with any certainty, but I'm going by my experience in the real estate field.

REP. ADINOLFI: What I would like to see in this is that in the very end, I'm reading over here, that they have a right to go to court. That means they're going to have to hire an attorney. It might cost them more than what they're going to save by, you know, for the plowing.

I think this should be, I hate to say, but the municipality should set their own rules and their zoning laws, just like we have state zoning laws that could cover this and then the planning and zoning in each municipality would be required to make sure this is implemented correctly.

RAYMOND YAMIN: Well, I certainly agree that there ought, you know, there ought to be ordinances requiring or also be enforced at say the planning and zoning level as you say, but the fact of the matter is, most of these situations have been created by lack of that oversight by these agencies.

So, sure, it would be great to have an extra layer of protection and have it be locally mandated, but so far that hasn't happened. These properties have fallen through the cracks and the towns don't get involved.

Basically it's a civil matter to argue with your neighbor, basically. So this is to take care of that intransigent neighbor that is not being reasonable.

REP. ADINOLFI: I have one right in my town where the state has a right of way in front of three

houses and they refuse to plow because they'd have to come off the main road and that right of way that the state has is too narrow for that plow.

I'm in favor of this. Don't misunderstand me, but I think it needs a lot of looking at because there are situations that are affected by this that are different in just about every way you go.

RAYMOND YAMIN: Well, the way this would help is, you know, the very threat of litigation, when you have a statute what you have is more of a certainty of the outcome in the litigation, just the fact that there is a statute.

People who aren't getting plowed there can say, look, there's a statute here. The person who is not contributing goes to the attorney and says, what do you think of this? And he's going to say, well, you're going to lose if you say you're not going to contribute in any way, you're going to lose. Hopefully that means there's no litigation. There's a settlement.

REP. ADINOLFI: Well, there's more positive about this bill, also. Another case, and I didn't hear it mentioned, but in case of an emergency there's been cases where a driveway is 1,000 feet long. You have some snowstorms like we had the last couple of weeks. An ambulance or a fire engine couldn't get up there.

So I think this is good, but I think we have to look at it a little bit more. Thank you.

SENATOR COLEMAN: Are there further questions?
Senator McLachlan.

SENATOR MCLACHLAN: Thank you, Mr. Chairman, for the second time. I wish Representative Serra was still here. I know he had to step out to another meeting, but he made a very good point

as Attorney Yamin concurred with and that is that municipalities might be engaged to participate more in this process.

I think the challenge there is that most of these private roads that I'm personally familiar with predate planning and zoning regulations and the existence of those commissions and bodies that enforce planning and zoning.

And so, you may want to entertain legislation going forward, but those requirements, for instance, in the City of Danbury for new development far exceed the existing roadways of these private roads.

So for instance, there was a private road with six homes that wished to be taken over. The homeowners wished to be taken over by the City for further maintenance and the City said we will do that but you have to bring your road up to current standards, and the cost to do that was \$50,000 per homeowner, because they had to widen the road. They had to give up parts of their front lawn to widen the road and they had to put drainage in, just like a new developer would have to do. And so the cost was burdensome to bring it up to current standards.

I think that this proposal is sort of a good balance to let people have an alternative to what might be Representative Serra's big picture idea that would be burdensome in cost to property owners.

RAYMOND YAMIN: Exactly. I've seen that situation a number of times that you described.

SENATOR MCLACHLAN: Thank you. Thank you, Mr. Chairman.

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pat/gbr JUDICIARY COMMITTEE

February 24, 2014
10:00 A.M.

SENATOR COLEMAN: Thank you. Any other members with questions? Seeing none, thank you, Attorney Yamin.

RAYMOND YAMIN: I thank the Committee for this opportunity.

SENATOR COLEMAN: Sandra Staub is next.

SANDRA STAUB: Good afternoon, Senator Coleman --

SENATOR COLEMAN: Good afternoon.

SANDRA STAUB: -- Representative Fox, distinguished members of the Judiciary Committee. My name is Sandra Staub and I'm Legal Director of the American Civil Liberties Union of Connecticut and I'm here to support Senate Bill 54 AN ACT CONCERNING COLLABORATION BETWEEN BOARDSS OF EDUCATION AND LAW ENFORCEMENT PERSONNEL.

The ACLU of Connecticut has long been concerned about the criminalization of students, typical student behavior and our concern has grown more as police officers are assigned more and more as school resource officers.

Many studies have shown that when police officers are assigned as school resource officers, student arrest rates increase dramatically.

A September, 2013 report by Voices by Children in Connecticut found that many students in our state have been arrested at schools for behaviors that were not criminal, such as skipping class, insubordination and swearing. These are matters that school administrators have traditionally handled, and should continue to handle as routine disciplinary matters.

Particularly troubling in the data, are the racial and ethnic disparities in school-based arrests. The same study from Voices found that

between police and schools. It also improves clarity and transparency by collecting and making data on school arrests publicly available.

On behalf of the Connecticut NAACP, thank you for the opportunity to testify and I'll gladly take questions if you have any.

SENATOR COLEMAN: Thank you very much for your testimony. Are there questions for Mr. Ansarri? Seeing no questions, I just wanted to commend you for what I've observed to be a very conscientious and active and committed leadership of the greater Hartford branch, but also your engagement in the State Conference. Thank you for being here and thank you for your testimony, but thank you for all of the things that you do as well.

MUHAMMAD ANSARRI: Thank you, Senator Coleman. I should have mentioned that I am the President of the Greater Hartford NAACP Branch. Thank you very much.

SENATOR COLEMAN: Have a good day. Will Lewis is next.

WILLIAM LEWIS: Good afternoon, Senator Coleman, members of the Judiciary Committee. My name is William Lewis. I'm an attorney with McDermid, Reynolds, Glissman here in Hartford, Connecticut. I'm here today representing the Real Property Section of the Connecticut Bar Association and our support of House Bill 5219 AN ACT CONCERNING MAINTENANCE OF PRIVATE EASEMENTS AND RIGHTS OF WAY.

This bill was introduced last year to address the specific requirement in the Fannie Mae Seller's Guide that's been holding up residential refinancing and sales, closings.

I understand this has been discussed today, so I'll try to keep it short, set out a few key points and answer any questions that you have.

You know, the proposed bill aims to codify what we believe to be the common law rule adopted by many of the jurisdictions around the country. It does not seek to change the substantive laws in any manner. Moreover, it simply creates the default rule in the absence of written agreements. If there's a written agreement, the written agreement will supersede the statute.

Again, the purpose of the statute is really just to remove an obstacle to closing, residential closings created by the Fannie Mae Seller's Guidelines.

You guys have the testimony that we've already submitted, so I won't go any further, but if you guys have any questions, I'd be happy to answer them, otherwise happy to help out in any way.

SENATOR COLEMAN: Are there questions for Attorney Lewis? Seeing none. We've heard a considerable amount concerning this issue but thank you for your contribution today.

WILLIAM LEWIS: Thank you.

SENATOR COLEMAN: Dolman Higueros.

DOLMAN HIGUEROS: Actually, I'm an interpreter for Dolman who is going to make his statement in Spanish.

My name is Dolman Higueros. I'm 16 years old originally from Guatemala and a resident of Stamford, Connecticut. I'm here in support of Sections 8 and 9 of Raised Bill No. 155.

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February 20, 2014

To: Members of the Judiciary Committee
Re: H.B. 5219 AN ACT CONCERNING MAINTENANCE OF PRIVATE EASEMENTS AND RIGHTS-OF-WAY

I am an attorney at law licensed in the State of Connecticut since 1980, with a private practice that has heavily emphasized the representation of buyers and sellers of residential real estate.

For various historical reasons, there are a vast number of properties throughout Connecticut that have been constructed on private rights of way for which there is no recorded document setting forth the maintenance obligations of property owners served by those rights of way. In most cases, informal arrangements have been made to actually maintain the rights of way, but in the event of a dispute, there is no written document to guide the parties or to enable contributing owners to force non-contributing owners to do so. In my experience, it is extremely difficult to convince even a small group of property owners to sign a road maintenance agreement, even if that agreement does nothing more than memorialize the duties that they are already performing informally. This alone would be a significant reason for enacting H.B. 5219: to avoid civil lawsuits where they should be entirely avoidable.

The second and more important reason is the policies of important players in the mortgage market, including Fannie Mae. If no written road maintenance agreement exists, then the originating mortgage lender must indemnify Fannie Mae against losses due to the condition of the right of way or a loss of access due to this condition. The result of this policy is that a mortgage lender will not agree to make the loan at all, rendering the property relatively unmarketable. This can result in a material diminution in home value for the property owner, to an extent entirely out of proportion with the actual risk present.

However, Fannie Mae's regulations provide that if legislation such as H.B. 5219 exists in a state, the absence of a written, private agreement is not an issue. Therefore, virtually no mortgage lender would have any disincentive to originate loans relating to properties in the State of Connecticut as a result of this issue. Enactment of H.B. 5219 would therefore solve what would otherwise be a significant marketability problem for many thousands of Connecticut homeowners in one fell swoop. It should be noted that such legislation is merely a "backup" for homeowners that have no private, written agreement. They would still be free to enter into their own, more specific agreement. Having personally witnessed how many homeowners have been adversely affected by this issue over the years, I would urge the Committee to act favorably on this Bill.

Respectfully yours,



Raymond P. Yamin, Esq.

RPY:la



State of Connecticut
SENATE

SENATOR MICHAEL A. McLACHLAN
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FINANCE, REVENUE, & BONDING COMMITTEE
JUDICIARY COMMITTEE
TRANSPORTATION COMMITTEE

February 24, 2014

Dear Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee:

I am State Senator Michael McLachlan, and I write to you today in support of House Bill 5219 *An Act Concerning Maintenance of Private Easements and Rights-Of-Way*

I support legislation that would establish requirements for the maintenance and repair of private easements and rights-of-way, because lending companies, such as Fannie Mae, do not want to lend on properties that are on a private road unless there's a written property maintenance agreement. This means that they can disqualify people seeking mortgages.

Fannie Mae does have an exception to the rule as stated on their guidelines, "If the property is located within a state that has statutory provisions that define the responsibilities of property owners for the maintenance and repair of a private street, no separate agreement or covenant is required."

The issue, as of now, is that there are many homes all over the state that are on private roads and driveways that have no written maintenance agreements. This type of legislation would put in place a maintenance agreement, which means it would help homeowners get the financing they need, make many Connecticut properties more marketable, and reduce disputes among neighbors when coming to an agreement.

I urge the committee to support this legislation.

Thank you.



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**Testimony of William Lewis
 Real Property Section**

IN SUPPORT

**HB5219
 AAC MAINTENANCE OF PRIVATE EASEMENTS AND RIGHTS-OF-WAY**

**February 24, 2014
 Judiciary Committee**

Sen. Coleman, Rep. Fox, members of the Judiciary Committee:

My name is William Lewis and I am here today representing the Real Property Section of the CT Bar Association in our **SUPPORT for HB5219, AN ACT CONCERNING MAINTENANCE OF PRIVATE EASEMENTS AND RIGHTS-OF-WAY.**

By way of background, the Fannie Mae Selling Guide (the "Selling Guide") contains the underwriting requirements that loans and properties must meet before a mortgage may be sold to Fannie Mae. Any residential mortgage intended to be sold on the secondary market, which is virtually all of them, must meet the requirements in the Selling Guide. The CBA's Real Property section's proposed bill addresses requirements of **Section B4-1.4-08** of the Selling Guide, which requires that if a property subject to a Fannie Mae mortgage "is located on a community-owned or privately-owned and maintained street, an adequate, legally enforceable agreement or covenant for maintenance of the street is required." That is, a loan will not be made on a property located on a private right of way or shared driveway unless there is a recorded, written maintenance agreement.

There is an exception in the Selling Guide, however, for states that have statutory provisions defining the responsibilities of property owners for the maintenance and repair of a private street or roadway. In these states, no separate agreement or covenant is required and the relevant section of the Selling Guide is satisfied.

Here in Connecticut, we have many such privately owned streets and shared driveways, and very frequently the homeowners will have only a verbal agreement, if they have any agreement at all, regarding maintenance of the roadway. And, unlike some other states, we do not have a statutory provision that mirrors the requirements set forth above.

The result for property owners is that, in a state such as ours where there is no statutory requirement for maintenance, if there is no agreement or covenant for maintenance of the street, or if an agreement or covenant exists but does not meet the requirements set forth in the Selling Guide, many sales and refinance closings are being held up or even canceled because this requirement is not met.

Therefore, in order to solve this problem, we are proposing legislation to establish a "statutory backdrop" governing the responsibilities for maintenance of private rights of way in Connecticut. We used as a loose model for the proposed legislation a statute that exists in the California Civil Code, which we were pointed to by a representative of Fannie Mae.

The proposed statute governs those situations where there is no enforceable, written agreement concerning maintenance of the right of way. Our goal was to codify what we believe the common law rule to be rather than to change existing law, and to provide a simple, elegant and equitable rule to guide courts if disputes arise in resolving conflicts among property owners.



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Testimony of Eric Hammerling, Executive Director, Connecticut Forest & Park Association

Public Hearing Subject Matter	Position
RAISED BILL 5220: AN ACT CONCERNING A PROPERTY OWNER'S LIABILITY FOR THE EXPENSES OF REMOVING A FALLEN TREE OR LIMB.	Oppose

Co-Chairs Coleman, Fox and Members of the Judiciary Committee:

The Connecticut Forest & Park Association (CFPA) is the first conservation organization established in Connecticut (1895). CFPA has offered testimony before the Legislature on issues such as sustainable forestry, state parks and forests, trail recreation, natural resource protection, and land conservation for over 115 years.

Today, I am here to testify in opposition to Raised Bill 5220. There are several reasons to oppose this bill:

1. This bill is unnecessary. Municipal tree wardens, the front lines in every community on tree management issues, already advise landowners to work together with an arborist to conduct tree risk management if circumstances require. You don't need to legislate this.
2. This bill is biased because it would provide unfair leverage to neighbors able to afford an arborist determination, and work against landowners who can't afford to either hire an arborist to give a second opinion, or to pay the expenses associated with tree or limb removal.
3. The language in Raised Bill 5220 is too loose, in particular the determination by the arborist of whether a tree or limb is "likely to fall." This determination is certainly subjective and debatable amongst arborists, and there is no option available to the private landowner with the tree/limb on their property to contest the finding of the arborist hired by the adjoining landowner.
4. Raised Bill 5220 is unfairly stacked against a landowner who may own forest land involving many boundaries with neighbors. Removal of trees and limbs can be quite expensive, and the liability associated with these trees can compel a landowner with a large forested property to remove trees (that provide considerable societal benefits) prematurely.

For the most part, neighbor-to-neighbor squabbles over boundary trees can and should be worked out by neighbors in an amicable fashion that fits the local conditions, not in a way that can quickly become litigious and drive wedges between neighbors. Again, I urge you to oppose Raised Bill 5220.

Thank you for the opportunity to testify. I would be glad to respond to any questions you may have