

Public Hearing - March 3, 2008

Testimony of Robert S. Poliner, Ombudsman for Property Rights

Re: Raised Bill No. 5636 An Act Concerning Relocation Assistance For Displaced Businesses And Compensation For Outdoor Advertising Structures

Senator Coleman, Representative Feltman, Ranking Members, Senators, Representatives, ladies and gentlemen;

I wish to thank the committee for raising a bill for the second successive session that has as its aim to pay businesses displaced by eminent domain for loss of goodwill.

Public Act No. 07-207 required the Ombudsman for Property Rights to examine the issue of businesses displaced by eminent domain and the feasibility of calculating the loss or gain of "good will" associated with such displacement.

I assembled a committee that included business and real estate appraisal experts and municipal, state and federal officials with extensive experience in the field of relocation assistance. They volunteered their time and provided a significant public service to the citizens of our state. Each of you has received a copy of the Goodwill Study.

Goodwill is different from other assets covered by the Uniform Relocation Act in that goodwill is an intangible asset. Some businesses have it and others don't. It may be the principal saleable and transferable asset of a business. It usually takes years to develop and it may be seriously impaired or destroyed by a change of location.

To try to limit the payment to only one particular type of business, in this case retail, is not fair to other types of businesses forced out of their existing homes. To limit the payment only to properties taken by municipalities pursuant to redevelopment and economic development statutes but not to properties taken for other uses under other statutes or by state agencies is not fair to all of the other owners of displaced businesses who have provable loss of goodwill.

Connecticut Department of Transportation exercises eminent domain powers more than any other public agency and should not be exempt from the requirement to pay businesses for loss of goodwill. The U.S. Federal Highway Administration has recently changed its practices and guidelines by providing for its continued

participation and funding if state law covers a payment otherwise ineligible under federal regulations.

The issue of displacement of occupants who are not owners of the real property or of any leasehold or other vested interest in the real estate requires equal attention with those who are owners of real property. Most businesses rent. Most businesses are small. In fact, according to 2005 U.S. Census statistics, approximately three quarters of all businesses in Connecticut have fewer than 10 employees. What we are talking about is helping the smallest, mom and pop businesses to stay in business and to be fairly compensated for losses resulting from government exercise of an extraordinary power.

The conclusion of the Goodwill Study is that Connecticut needs to address the amount of money businesses receive when required to move including money to pay for loss of goodwill associated with displacement. The ability of a business to move and to operate successfully at the replacement site turns on finding such a location, making the new space or property functional, paying higher operating expenses, holding the loyalty of existing customers and employees and attracting new customers.

To the extent businesses are able to succeed in the new location, there will be fewer job losses, more state and municipal tax revenues and more economic vitality in the municipality and State. Another important benefit will be fewer claims for loss of goodwill.

Connecticut's relocation assistance statutes and regulations have not been updated since the 1970s. Many businesses close that would remain open if the amount of payments for search, reestablishment and other expenses and payment for loss of goodwill were available and/or increased. Many states including New Hampshire, Maine and Maryland have made recent changes. I have provided information concerning these and other states in the study. The unmistakable trend is for states to authorize payments that exceed their former limits and federal limits, especially reestablishment and in lieu fixed payments.

Specifically, I recommend Section 8-268 be amended to provide for a business operating in 10,000 square feet or more or moving to a site that exceeds its current location by a factor of 1.25 but not less than 10,000 square feet and employs 10 or more full and part time employees or is engaged in manufacturing or has a gross volume of business which exceeds \$1,000,000 or an average net earnings over the last two years of at least \$100,000 should be eligible to receive up to \$25,000 in

search expenses, \$250,000 in reestablishment expenses and \$250,000 fixed payments in lieu of moving expenses. All other businesses should be eligible to receive up to \$10,000 in search expenses, \$100,000 in reestablishment expenses and \$100,000 fixed payments. The capped amounts should be indexed and adjusted annually.

With respect to goodwill, I recommend California's statute and administrative procedures be carefully examined, and where applicable, adopted. This will insure that reasonable steps by property owners to prevent loss of goodwill will be taken and payments made under the Uniform Relocation Act will not be duplicated in payment for loss of goodwill. The business owner will be responsible for proving the loss of goodwill is the result of the taking of the property or injury to the remainder in the case of a partial taking.

I ask the committee members to review the study and additional information on goodwill and eminent domain I have submitted previously and today as attachments to my written statement.

I'm happy to answer any questions you may have.