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Office of the Attorney General
State of Connecticut

November 21, 2018

Denise L. Nappier, State Treasurer
Connecticut Office of the State Treasurer
55 Elm Street
Hartford, CT 06106

Dear State Treasurer Nappier:

By letter of November 9, 2018, you have requested a formal opinion concerning the impact of recent legislative amendments on the state's bond cap and bond covenants. In making this request, you provided us a legal memorandum prepared by one of your outside bond counsel concerning the same questions you have posed to us. We have carefully and independently analyzed those questions and have reached conclusions consistent with those of your outside counsel. As explained below, we conclude that the covenant the State provided to bond purchasers on May 15, 2018 was proper, and that the State may exclude certain classes of debt from the calculation of the bond cap as recently directed by the legislature in Public Act 18-178.

**Summary**

By way of initial background, in 2017, the legislature first enacted a "cap" of $1.9 billion per year on State borrowing through general obligation bonds, to be effective July 1, 2018, and a provision requiring the state to offer certain covenants to bondholders about that cap, effective May 15, 2018. On May 9, 2018, the legislature enacted several bills affecting the bond cap and covenants that the State was required to offer to bond purchasers in connection with future bond offerings.

The original bond cap, enacted in 2017, provided an exclusion from the calculation of the bond cap for general obligation bonds issued as part of CSCU 2020 or as part of UConn 2000. *See* Public Act 17-2 § 712(f)(1)(B). This year, by Public Act 18-178, § 16(f)(1)(B), effective July 1, 2018, the legislature added three additional exclusions to the calculation of the bond cap for (1) bonds for the purpose of refunding other bonds, (2) certain revenue anticipation bonds and (3) bonds for transportation projects for up to $250 million for each of calendar years

2018 and 2019. These new exclusions were codified as Conn. Gen. Stat. § 3-21(f)(1)(B)(ii-iv). Because these new exclusions took effect July 1, 2018, while the requirement for a bond covenant took effect May 15, 2018, there is uncertainty about whether the additional three exclusions should be incorporated into the bond covenants. To resolve this uncertainty, you have requested a formal opinion addressing the following questions:

> Considering all legislative enactments through 2018 regarding the bond cap and bond covenants, in calculating the $1.9 billion annual bond cap, shall I apply all of the exclusions in Conn. Gen. Stat. § 3-21(f)(1)(B)(i-iv) as effective July 1, 2018, or only the exclusions for general obligation bonds issued as part of CSCU 2020 and UConn 2000?
>
> Considering all legislative enactments through 2018 regarding the bond cap and bond covenants, am I obligated to covenant to bond purchasers that no changes will occur to the $1.9 billion annual bond cap taking into account all of the exclusions in Conn. Gen. Stat. § 3-21(f)(1)(B)(i-iv) as effective July 1, 2018, or only the exclusions for CSCU 2020 and UConn 2000?

After careful review and consideration, we have concluded that in calculating the $1.9 billion annual bond cap, you should apply all of the exclusions in Conn. Gen. Stat. § 3-21(f)(1)(B)(i-iv) as effective July 1, 2018. We have further concluded that the legislature intended that the covenant you provide to bond purchasers requires that, during the time the covenant is in effect, no changes will occur to Conn. Gen. Stat. § 3-21(f)(1)(B)(i-iv) as effective on July 1, 2018. Lastly, we conclude that the covenant that you provided to purchasers of bonds after May 15, 2018 was consistent with the legislative intent.

## The Statutes

Analysis of the issues presented by your questions must begin with a review of sections of several key interrelated acts – one from October, 2017 and three passed on the last day of this year's legislative session, May 9, 2018. A

summary of the key relevant portions of those statutes and a description of when each was passed, signed by the governor, and stated it was effective, is as follows:

1. Public Acts, Spec. Sess., June, 2017, No. 17-2 (P.A. 17-2), §§ 712, 706 passed and signed October 31, 2017

   § 712. "Bond Cap" – "***effective from passage* [October 31, 2017]**" – added new Conn. Gen. Stat. § 3-21(f) which provided that on and after July 1, 2018, the Treasurer may not issue bonds that exceed $1.9 billion in any fiscal year, except as part of CSCU 2020 or UConn 2000, to meet cash flow needs, or to cover emergency needs in times of natural disasters.

   § 706. "Bond Covenant" – ***effective "May 15, 2018"*** – added new Conn. Gen. Stat. § 3-20(aa) which provides that for bonds issued on or after *May 15, 2018* and before July 1, 2020, the state covenants to comply with subsections (A)-(E), including subsection (E), which is the bond cap provision, and also including subsection (A), which encompasses the requirements of Conn. Gen. Stat. § 4-30a, a provision that requires the transfer of annual income tax revenues over $3.15 billion per fiscal year to the Budget Reserve Fund, to be used as statutorily directed. Further, *for bonds issued between those dates, May 15, 2018 and July 1, 2020, no act of the General Assembly taking effect on or after May 15, 2018 shall alter the obligation to comply with the provisions of (A) through (E).*

2. Public Acts 2018, No. 18-49, § 8 (P.A. 18-49) – passed May 9, 2018, 10:42 pm; (by its terms, "***effective May 15, 2018***," although not signed until May 31, 2018) (change to bond covenant)

   § 8. Changed the bond covenant in Conn. Gen. Stat. § 3-20(aa)(1) by amending subsection (aa)(1)(A) to add a reference to compliance with (A) as amended "by Section 7 of this act [18-49]," which section

included in the calculation of the Budget Reserve Fund the revenue from the new Business Entity tax.

3. Public Acts 2018, No. 18-81, § 21 (P.A. 18-81) – passed May 9, 2018, 11:21 pm, signed May 15, 2018, (by its terms, "***effective May 15, 2018***") (changes to bond covenant)

   § 21. Reduced the length of time that the bond covenant will be effective so that it will end on July 1, 2023, instead of July 1, 2028 (reduction from 10 years to 5 years) and added a reference in Conn. Gen. Stat. § 3-20(aa)(1)(A) to § 20 of this act [18-81], which amended Conn. Gen. Stat. § 4-30a to provide for an annual adjustment to the threshold for the transfer of revenue to the Budget Reserve Fund and then limited further changes.

4. Public Acts 2018, No. 18-178, § 16 (P.A. 18-178) – passed May 9, 2018, 11:23 pm, signed June 14, 2018, (by its terms, effective July 1, 2018) (changes to bond cap)

   § 16. Added three new exclusions to the bond cap (not covenant) statute, Conn. Gen. Stat. § 3-21(f)(1)(B), and also to Conn. Gen. Stat. § 3-21(f)(2)(C) for refunding bonds, certain revenue anticipation bonds, and transportation bonds of up to $250 million for each of calendar years 2018 and 2019.

**The Apparent Statutory Conflicts**

As noted above, the bond covenant statute, as first passed in 2017, P.A. 17-2, and as modified in 2018 by P.A. 18-49 and P.A. 18-81, says that the state covenants that no act of the General Assembly "taking effect on or after May 15, 2018" shall alter the obligation to comply with Conn. Gen. Stat. § 3-20(aa)(1)(A)-(E). The obligations not to be altered included provisions establishing the bond cap. However, after enacting the covenant provision limiting alteration of the bond cap, the legislature appeared to directly violate and

contradict that mandate by altering the manner that the bond cap is calculated and directing other actions inconsistent with the mandate.

First, on May 9, 2018, the legislature enacted P.A. 18-49, which it explicitly stated was to be effective May 15, 2018. P.A. 18-49 changed the covenant requirements by adding to Conn. Gen. Stat. § 3-20(aa)(1)(A) a reference to § 7 of P.A. 18-49, which added an additional source of funding for the Budget Reserve Fund ("The Affected Business Entity Tax") created by § 1 of P.A. 18-49, effectively placing a limit on how those funds could be used. Thus, P.A. 18-49 appears to be an alteration, taking effect on or after May 15, 2018, to an obligation, in place on October 31, 2017, to comply with the provisions of (A)-(E) of the bond covenant requirements.

The legislature then, also on May 9, 2018, enacted P.A. 18-81, § 21, also, by its terms, effective May 15, 2018. That Act explicitly modified Conn. Gen. Stat. § 3-20(aa)(1)(A) of the covenants by referencing § 20 of P.A. 18-81, which provided for an annual adjustment to the determination of the amount that must be transferred to the Budget Reserve Fund. P.A. 18-81 also modified Conn. Gen. Stat. § 3-20(aa)(1)(E) of the covenants to change the expiration date for the covenants in (A)-(E) from July 1, 2028 to July 1, 2023, reducing the effective period of the covenants from 10 years to 5 years. These changes, too, appear to be alterations to obligations to comply with the provisions of Conn. Gen. Stat. § 3-20(aa)(1)(A)-(E) of the bond covenant requirements taking effect on or after May 15, 2018.

Finally, and significantly, the General Assembly on May 9, 2018, enacted P.A. 18-178, by its terms, effective July 1, 2018. This statute amended subsections (f)(1)(A) and (f)(1)(C) of Conn Gen. Stat. § 3-21 to create three new exclusions to the bond cap (not covenant) statute for bonds for refunding, for certain revenue anticipation bonds, and for transportation bonds of up to $250 million for each of calendar years 2018 and 2019. Because the provisions of Conn. Gen. Stat. § 3-21 were part of the terms covered by the covenant in subsection Conn. Gen. Stat. § 3-20(aa)(1)(E), this provision, too, appears to be an alteration to an obligation to comply with the provisions of the bond covenant requirements taking effect on or after May 15, 2018. Also, on the face of this act, these new exclusions do not appear to take effect until July 1, 2018.

Further, there are other apparent anomalies that need to be resolved. As noted above, the bond covenant promises consist of the provisions of subsections (A)-(E) of Conn. Gen. Stat. § 3-20(aa)(1), which the covenant says are to be applied to bonds issued on or after May 15, 2018. Subsection (E) requires that the

State comply with Conn. Gen. Stat. § 3-21, and Conn. Gen. Stat. § 3-21(f)(1)(A) provides that "[o]n and after July 1, 2018, the Treasurer may not issue general obligation bonds or notes pursuant to section 3-20 or credit revenue bonds pursuant to section 3-20j that exceed in the aggregate one billion nine hundred million dollars in any fiscal year." In other words, the statute that the Treasurer is directed to follow in calculating the bond cap says it applies "[o]n and after July 1, 2018." As there is no other legislative cap, this provision means that the legislature has not created any cap for the covenants to offer for any time prior to July 1, 2018, and so there can be no cap for fiscal years or parts of fiscal years prior to July 1, 2018. Yet, the terms of the covenant itself promise compliance with (A) through (E) and that no act of the General Assembly taking effect on or after May 15, 2018 shall alter the obligation to comply with (A) through (E). Because the cap did not take effect until July 1, 2018, it cannot be calculated for any time prior to July 1, 2018.

In summary, the statutes passed on May 9, 2018, present two major problems in interpreting the intent of the legislature:

1) After creating a bond covenant, including a direction that no act of the General Assembly taking effect on or after May 15, 2018 shall alter the obligation to comply with the provisions of its terms, the General Assembly enacted at least three provisions taking effect on or after May 15, 2018 that appear to conflict with the obligations required by the covenant.

2) The General Assembly created a requirement of a bond covenant for bonds issued on or after May 15, 2018 with specified terms, but the terms had no effect until July 1, 2018, because the bond cap, by its terms, only applies from that date.

**Applicable Rules of Statutory Construction**

In interpreting statutes, and in particular, in interpreting statutes which are potentially in conflict, the following general rules apply:

1) First, if the meaning of the statute or statutes in question is plain on their face, then the plain meaning controls. The plain meaning rule is codified at Conn. Gen. Stat. § 1-2z. Under the plain meaning rule, a court looks first to the text of the statute and its relationship to other

statutes to determine its meaning. If, after such consideration, the meaning of the statutory text is plain and unambiguous and does not yield absurd or unworkable results, the court cannot consider extratextual evidence of the meaning of the statute. As required by Conn. Gen. Stat. § 1-2z, statutory analysis begins with the text of the statute. *Potvin v. Lincoln Service & Equip. Co.*, 298 Conn. 620, 632 (2010). On the other hand, if a statute's language is ambiguous, a court is not constrained by the plain meaning rule in Conn. Gen. Stat. § 1-2z; still, the objective remains to ascertain the legislature's intent by applying the settled rules of statutory construction. *Corsair Special Situations Fund, L.P. v. Engineered Framing Systems, Inc.*, 327 Conn. 467, 473 (2018); *In re Tyriq T.*, 313 Conn. 99, 104-05 (2014).

2) When the meaning of the statutes is not clear, courts must construe the statutes in light of the presumption that the legislature intended to create a harmonious and consistent body of law. *Valliere v. Comm'r of Social Services*, 328 Conn. 294, 318 (2018); *Allen v. Comm'r of Revenue Servs.*, 324 Conn. 292, 309 (2016); *LaFrance v. Lodmell*, 322 Conn. 828, 838 (2016); *State v. Menditto*, 315 Conn. 861, 869 (2015). "[T]his tenet of statutory construction . . . requires us to read statutes together when they relate to the same subject matter . . . . Accordingly, [i]n determining the meaning of a statute . . . we look not only at the provision at issue, but also to the broader statutory scheme to ensure the coherency of our construction. . . ." *In re Jan Carlos D.*, 297 Conn. 16, 21-22 (2010) (citations and quotations marks omitted), overruled on other grounds, *State v. Elson*, 311 Conn. 726 (2014); *In re Tyriq T.*, supra, 313 Conn. 115. Statutes must be construed to account for related statutes governing the same general subject matter. *Wilkins v. Connecticut Childbirth & Women's Center*, 314 Conn. 709, 721 (2014); *CHRO v. Truelove & Maclean, Inc.*, 238 Conn. 337, 347 (1996). Statutes should be read to harmonize with each other, and not to conflict with each other. *State v. Victor O.*, 320 Conn. 239, 251 (2016); *Efstathiadis v. Holder*, 317 Conn. 482, 492-93 (2015).

3) The legislature is presumed to be aware of existing statutes, judicial decisions and common law, to have intended the effect on existing law that its action or non-action produces, and to have the new law read in conjunction with the existing body of law as one consistent body.

*CHFA v. Alfaro*, 328 Conn. 134, 144 (2018); *Mayer v. Historic District Comm'n*, 325 Conn. 765, 777 (2017).

4) While statutes must be construed harmoniously, they should also be construed so that no word in a statute is treated as superfluous or insignificant. Independent meaning should be attached to every phrase in a statute. *Valliere v. Comm'r of Social Services*, supra, 328 Conn. 318-19; *Williams v. General Nutrition Centers, Inc.*, 326 Conn. 651, 664 (2017).

**Application of the Rules of Statutory Construction to these Statutes**

The legislature could not have intended to violate its own rule against altering its own covenant three times on the last night of the legislative session. Nor could the legislature have intended to require a specific bond covenant for the period between May 15, 2018 and July 1, 2018, when it did not provide any instruction about what a key component of the covenant would be prior to July 1, 2018. It is apparent, therefore, that the statutes passed on May 9, 2018 do not have an unambiguous plain meaning, and that resort to extra-textual considerations is necessary to resolve potential conflicts among them.

Thus, we are faced with the question of whether there is any statutory interpretation that can reasonably and harmoniously reconcile the statutory provisions described above, consistent with the general rules of statutory interpretation. We believe there is, as follows:

First, in light of the fact that the legislature only provided direction for the Treasurer not to issue bonds in excess of the bond cap "on or after July 1, 2018," the legislature could not have intended for a bond covenant to apply a cap before that date, since it gave no direction about how to determine such a cap.

Second, because the bond cap first takes effect on or after July 1, 2018, it seems apparent that the legislature intended the cap to include all statutory provisions defining the cap as of that date. Those provisions include the additional exclusions for bonds for refunding, certain revenue anticipation bonds, and transportation bonds of up to $250M for each of calendar years 2018 and 2019.

This view of the statutory scheme appears to reconcile harmoniously most of the potentially conflicting legislative enactments of May 9, 2018, with one

possible exception: it leaves the question of what the legislature meant when it required in P.A. 17-2, § 706, that, for bonds issued on or after May 15, 2018 and before July 1, 2020, the state shall covenant that no act of the General Assembly taking effect on or after May 15, 2018 shall alter the obligation to comply with the provisions of (A)-(E). As noted above, this question is especially important because the legislature passed at least three such acts on May 9, 2018, each of which appeared to take effect during the forbidden timeframe. One possible interpretation is that the provision barring covenant alterations has no practical effect as to legislation taking effect before July 1, 2018 because there is no cap with which to comply before that date. This interpretation is plausible, but it risks disregarding the rule that no word or phrase in a statute should be ignored or construed as superfluous.

Is there an interpretation of the statutorily required bond covenant that "no public or special act . . . taking effect on or after May 15, 2018 . . . . shall alter the obligation to comply [with the covenants in subsections (A)-(E)]" that is consistent with the clear intent of the legislature that the bond cap and its covenants will be locked into place as of July 1, 2018, with all statutory enactments in effect as of that date, and not before. In fact, there does appear to be a reasonable construction of the prohibition on "act[s] . . . taking effect on or after May 15, 2018" from altering the obligations to comply with covenant terms (A)-(E). Because we cannot assume that the legislature intended to completely and repeatedly contradict itself, the only plausible explanation is that the legislature intended to bar any *new* public act, or any public act *other than one already passed prior to May 15, 2018,* that would alter the covenants in question. This construction resolves all of the otherwise conflicting legislative directives in an entirely harmonious way.

This construction also comports well with a common sense interpretation of what the legislature must have intended. Both the foregoing analysis and the plain words of the acts demonstrate that the legislature intended the bond covenants to apply to bonds issued on or after May 15, 2018, but that the covenants would have no fixed meaning before the Treasurer calculated the cap starting on July 1, 2018. Thus, the legislature must have intended that the covenants would be included with bonds issued after May 15, 2018, but that the full meaning of the covenants could and would be defined only on and after July 1, 2018. What the legislature was covenanting about future legislation, in other words, is that it would not pass any *further* alterations to the covenants after its current session, which ended prior to May 15, 2018. This interpretation is not only reasonable, but also entirely fair to bondholders who purchased bonds with

the covenants, as they would be presumed to have purchased them with full knowledge of these legislative actions, all of which had been completed well before the first sale of bonds with the new covenants. Further, according to the information you have provided, this interpretation is consistent with the covenants that were actually provided with general obligation bonds issued since May 15, 2018. Those covenants simply quoted Conn. Gen. Stat. § 3-20(aa), and our discussion above explains our view of the correct interpretation of that statute. While the bond offerings also included brief explanatory text regarding the covenants, that text simply referenced, without more specificity, "[s]ection 3-21 of the General Statutes (the debt limit, including the limitation on the issuance by the State of general obligation bonds or credit revenue bonds to $1.9 billion in each fiscal year subject to certain exclusions . . . .)" Because the exclusions were not further specified, they were, of necessity, those in the referenced statutes. As discussed above, those statutes, read as a coherent whole, require inclusion of all of the exclusions in Conn. Gen. Stat. § 3-21(f)(1)(B)(i-iv) as effective July 1, 2018, from the calculation of the $1.9 billion cap.

I trust that this opinion is responsive to your request.

Very truly yours,

GEORGE JEPSEN
ATTORNEY GENERAL

Enc.

cc: The Honorable Dannel P. Malloy, Governor
The Honorable Martin M. Looney, Senate President Pro Tempore
The Honorable Bob Duff, Senate Majority Leader
The Honorable Leonard Fasano, Senate Republican President Pro Tempore
The Honorable Kevin Witkos, Deputy Senate Republican President Pro Tempore
The Honorable Joe Aresimowicz, Speaker of the House
The Honorable Matthew D. Ritter, House Majority
The Honorable Themis Klarides, House Minority Leader
Mr. Benjamin Barnes, Secretary, Office of Policy Management

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**TO:** **Hon. Denise L. Nappier**
**Treasurer**

**FROM:** **Bruce A. Chudwick, Patrick M. Fahey & Scott L. Murphy**
**Shipman & Goodwin LLP**

**DATE:** **November 15, 2018**

**RE:** **Bond Cap and Bond Covenant Legislation**

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On the final day of the 2018 regular session, the General Assembly passed three bills that appear to be in conflict; all were signed into law. On the one hand, the laws require the State of Connecticut to pledge, in connection with bonds issued on or after May 15, 2018, that the State will adhere to certain statutory provisions and that those provisions will not be altered by any law "taking effect on or after May 15, 2018." On the other hand, the laws expressly alter several of those statutory provisions, including by establishing a new bond cap calculation beginning on July 1, 2018.

This memorandum addresses whether the conflict between these legislative acts can be reconciled through application of the principle of statutory construction requiring that statutes be construed to avoid conflict and in a manner that supports a harmonious construction of the law.[1] This memorandum has been prepared at the request of the Office of the Treasurer exclusively for the benefit of our client, the State of Connecticut,

[1] Other principles that might impact construction of such conflicting legislation, including the priority afforded to legislation based on the timing of its enactment and retroactivity, are not addressed in this memorandum.

including for the purpose of assisting the Office of the Attorney General in its consideration of the same legal issues. It may not be relied upon by, and does not in any manner whatsoever run to the benefit of, any third party. For the reasons developed more fully below, although we cannot opine with certainty how a court would rule on these issues, we believe that a court would attempt to construe the bond covenant statute in a manner consistent with the demonstrable intent of the legislature so as to give full effect to the other provisions passed by the General Assembly on May 9, 2018 modifying the bond covenant statute.

## I. BACKGROUND.

In connection with passage of the State budget in October 2017 for the biennium ending June 30, 2019, the General Assembly enacted legislation implementing a bond covenant requirement on certain obligations to be issued on and after May 15, 2018, as well as a cap on new bond issuances beginning July 1, 2018. This was accomplished as part of the work to pass a budget in the special session of the General Assembly that convened in June 2017. The budget ultimately passed in October and was signed into law on October 31, 2017 as Public Act No. 17-2 (June Sp. Sess.).

### A. The Bond Cap Provision.

The bond cap generally provided that, subject to adjustments based on the consumer price index, "[o]n and after July 1, 2018, the Treasurer may not issue general obligations bonds or notes pursuant to section 3-20 or credit revenue bonds pursuant to [section 3-20j] that exceed in the aggregate [$1.9B] in any fiscal year." Bonds issued as part of CSCU 2020 and UConn 2000 were excluded from the cap, and the statute further

provided that the cap did not apply to money borrowed to "meet[] cash flow needs" or to "cover[] emergency needs in times of natural disaster." Public Act No. 17-2 § 712 (June Sp. Sess.).

**B. The Bond Covenant Provision.**

As part of Public Act No. 17-2 (June Sp. Sess.), the General Assembly also enacted a provision mandating that, while any general obligation bond or credit revenue bond issued on and after May 15, 2018, and prior to July 1, 2020 remained outstanding, the State comply with certain provisions of the General Statutes as established or amended by other provisions of the budget. Those provisions were:

> (A) section 4-30a of the general statutes, revision of 1958, revised to January 1, 2017, as amended by section 704 of Public Act No. 17-2,
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> (B) section 705 of Public Act No. 17-2 in effect on the effective date of said section 705 (October 31, 2017),
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> (C) section 2-33a of the general statutes, revision of 1958, revised to January 1, 2017, as amended by section 709 of Public Act No. 17-2,
>
> (D) subsections (d) and (g) of [section 3-20], revision of 1958, revised to January 1, 2017, as amended by sections 710 and 711 of Public Act No. 17-2, and
>
> (E) section 3-21 of the general statutes, revision of 1958, revised to January 1, 2017, as amended by section 712 of Public Act No. 17-2.

Public Act No. 17-2 § 706 (June Sp. Sess.). As noted above, section 712 (the subject of subdivision (E)) is the bond cap provision.

In addition to language representing the State's intent to comply with these provisions of the General Statutes, the State expressly pledged to the holders of any obligations to be issued during that period (i.e. May 15, 2018 to June 30, 2020), "that no public or special act of the General Assembly taking effect on or after May 15, 2018, and

prior to July 1, 2028, shall alter the obligation to comply with the provisions of the sections and subsections set forth in subparagraphs (A) to (E) ... until such bonds, notes or other obligations, together with the interest thereon, are fully met and discharged." *Id.* Moreover, the statute directed the Treasurer to include the statutory "pledge and undertaking" in any obligations issued during the relevant period, provided that the "pledge and undertaking (A) shall be applicable for a period of ten years from the date of first issuance of such bonds, and (B) shall not apply to refunding bonds issued for bonds issued under this subdivision." *Id.* Thus, for any obligation issued from and including May 15, 2018 to June 30, 2020, the State would include this affirmative pledge, and the pledge would be effective for at least a period of ten years from the date of first issuance of bonds subject to the obligation.

The purpose of enacting the covenant language was to "bind future Legislatures to adhere to the[] policies" reflected in the October 2017 budget – specifically the spending cap and bond cap implemented in that act. Senate Proceedings, June 2017 Sp. Sess., Oct. 25, 2017, at 003382 (statement of Senator Fonfara). In other words, while a legislature is generally free to amend or repeal any legislation as it sees fit, requiring that these statutory commitments be made in the form of bond covenants was intended to ensure that the General Assembly could not alter the commitments, once vested, by future legislation.[2]

[2] The covenant provision did provide a mechanism for the General Assembly to alter the statutory commitments. Specifically, the Act provided that "nothing in this subsection shall preclude such alteration (i) if and when adequate provision shall be made by law for the protection of the holders of such bonds, or (ii) (I) if and when the Governor declares an emergency or the existence of extraordinary circumstances, in which the provisions of section 4-85 of the general statutes are invoked, (II) at least three-fifths of the members of each chamber of the General Assembly vote to alter such required compliance during the

### C. The Effective Dates of Public Act No. 17-2 (June Sp. Sess.).

The Governor approved the bulk of the budget on October 31, 2017.[3] The bill (including the bond cap provision in § 712) was effective "from passage," which therefore resulted in an effective date of October 31, 2017. Yet, while the statute's effective date was "from passage," the bond cap itself was not to go into effect until July 1, 2018 – not because of the prefatory clause (which, as noted, was from passage) but because of the General Assembly's express direction that the bond cap calculation apply only "[o]n and after July 1, 2018." And, while the bond covenant was included (as § 706) in the larger budget bill that was effective as of October 31, 2017, it too had an express effective date, but that date was May 15, 2018 and, unlike the bond cap, the effective date was specified in the prefatory clause of the bond covenant provision – § 706.

There was thus some potential ambiguity in the General Assembly's use of the phrase "effective date" in the prefatory clauses of the various provisions of Public Act No. 17-2 (June Sp. Sess.), in its use of the phrase "taking effect on or after May 15, 2018" in the bond covenant provision (section 706) and its specification of the date upon which the bond cap established by section 712 was to be calculated (i.e. "[o]n and after July 1, 2018"), particularly since it is clear from at least the enumeration of the various provisions in (A) through (E) of § 706 that the General Assembly intended that the bond covenant

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fiscal year for which the emergency or existence of extraordinary circumstances are determined, and (III) any such alteration is for the fiscal year in progress only."

[3] The Governor vetoed certain aspects of the budget that are not relevant here.

provision take into account other provisions of Public Act No. 17-2 that it passed contemporaneously with the bond covenant provision.[4]

**D. 2018 Amendments to the Bond Cap and Bond Covenant Provisions.**

The covenant provision of the Public Act No. 17-2 (June Sp. Sess.), § 706, which was codified at General Statutes § 3-20(aa), indicates that the General Assembly intended the State's obligations under that provision to be as of a fixed point in time; that is to say, each of the statutory provisions enumerated in subparagraphs (A) through (E) is listed in terms of the provision as in effect essentially on the date of passage of Public Act No. 17-2. Nevertheless, it is clear that the General Assembly intended to further amend those provisions prior to the effective date of § 706 (i.e. May 15, 2018).

Specifically, in the 2018 regular session of the General Assembly, the Committee on Finance, Revenue and Bonding introduced Raised Bill No. 5590: "An Act Concerning Bond Covenants and the Bond Issuance Cap." As reflected by its title, the bill proposed changes to both the bond covenant and the bond cap established by Public Act No. 17-2. The bill essentially contained modifications (by means of repeal and substitution) to the bond covenant statute, General Statutes § 3-20(aa). It proposed a new section to the General Statutes, § 3-20(bb), that would delay the inclusion of certain of the bond covenants until July 1, 2019, and it added certain exceptions (by means of repeal and substitution) to the bond cap statute, General Statutes § 3-21(f). As initially drafted, the

[4] Each of the provisions identified in the bond covenant as those provisions with which the State pledged to comply, i.e. § 706 (A) – (E), were either entirely new provisions of law (subparagraphs (B) & (E)), or were contemporaneously revised and amended in different sections of Public Act No. 17-2 (subparagraphs (A), (C) & (D)).

changes to the bond cap statute were to be "effective from passage." *See* Raised Bill No. 5590, § 3.

Importantly, the change proposed to the bond covenant statute in the bill (i.e., those obligations and corresponding covenants that would be delayed until July 1, 2019), also expressly referenced the amendment to the bond cap statute. Specifically, the reference to the bond cap provision in Section 2 of Raised Bill No. 5590 read (emphasis added): "section 3-21 of the general statutes, revision of 1958, revised to January 1, 2017, as amended by section 712 of public act 17-2 of the June special session *and section 3 of this act*." Section 3 contained the proposed amendment to the bond cap statute, so it was clear that the obligations and covenants related to the bond cap statute as amended, and not the bond cap statute as in effect at the time of passage of the budget in October 2017.[5]

Ultimately changes to both the bond covenant provision and the bond cap provision were made on the very last day of the session, May 9, 2018. By the time these changes were presented to the General Assembly, they appeared in separate bills and were substantially different than as initially proposed in Raised Bill No. 5590.

In addition to Raised Bill No. 5590, Governor's Bill No. 11 also proposed alterations to the bond covenant provisions. That bill generally concerned the implementation of a business entity tax in response to federal tax reform legislation. To

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[5] The Treasurer supported the changes to the bond cap statute because, in her view, the cap appeared inadvertently to include bonds issued to refund other obligations of the State and bond anticipation notes. According to the Treasurer, "[t]he refunding bonds create debt service savings and the bond anticipation notes are retired by permanent long-term bonds;" neither of these types of debt increases the State's overall level of debt. *See* April 2, 2018 Testimony of Hon. Denise L. Nappier to Committee on Finance, Revenue and Bonding.

the extent relevant here, the bill proposed including such tax revenue in the Budget Reserve Fund established by General Statutes § 4-30a and modification of the bond covenant statute to indicate that alteration. Governor's Bill No. 11, Sections 7 & 8. This bill, too, was revised and ultimately was passed as substitute Senate Bill No. 11 on May 9, 2018.

**E. The Revised Bond Covenant Provision.**

Changes to the bond covenant provision were made in Section 8 of Public Act No. 18-49: "An Act Concerning an Affected Business Entity Tax, Various Provisions Related to Certain Business Deductions, The Estate and Gift Tax Imposition Thresholds, the Tax Treatment of Certain Wages and Income and a Study to Identify Best Practices for Marketing the Benefits of Qualified Opportunity Zones." Section 8 provides:[6]

> Subdivision (1) of subsection (aa) of section 3-20 of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective May 15, 2018*):
>
> (aa) (1) For each fiscal year during which general obligation bonds or credit revenue bonds issued on and after May 15, 2018, and prior to July 1, 2020, shall be outstanding, the state of Connecticut shall comply with the provisions of (A) section 4-30a of the general statutes, revision of 1958, revised to January 1, 2017, as amended by section 704 of public act 17-2 of the June special session and section 7 of this act [7], (B) section 2-33c in effect on October 31, 2017, (C) section 2-33a of the general statutes, revision of 1958, revised to January 1, 2017, as amended by section 709 of public act 17-2 of the June special session, (D) subsections (d) and (g) of this section, revision of 1958, revised to January 1, 2017, as amended by sections 710 and 711 of public act 17-2 of the June special session, and (E) section 3-21 of the general statutes, revision of 1958, revised to January 1, 2017, as amended by section 712 of public act 17-2 of the June special session. The state of Connecticut does hereby pledge to and agree with the holders of any bonds, notes and other obligations issued pursuant to subdivision (2) of this subsection that

[6] The underscored material indicates material added to General Statutes § 3-20(aa).
[7] Section 7 amended General Statutes § 4-30a to include in the calculation of the Budget Reserve Fund the tax revenue from the new business entity tax.

> no public or special act of the General Assembly taking effect on or after May 15, 2018, and prior to July 1, 2028, shall alter the obligation to comply with the provisions of the sections and subsections set forth in subparagraphs (A) to (E), inclusive, of this subdivision, until such bonds, notes or other obligations, together with the interest thereon, are fully met and discharged, provided nothing in this subsection shall preclude such alteration (i) if and when adequate provision shall be made by law for the protection of the holders of such bonds, or (ii) (I) if and when the Governor declares an emergency or the existence of extraordinary circumstances, in which the provisions of section 4-85 are invoked, (II) at least three-fifths of the members of each chamber of the General Assembly vote to alter such required compliance during the fiscal year for which the emergency or existence of extraordinary circumstances are determined, and (III) any such alteration is for the fiscal year in progress only.

As relates to the covenant, the only change was to alter subparagraph (A) to reference the alteration to General Statutes § 4-30a by Section 7 of the act. Notably, the length of the covenant remained the ten-year period implemented in Public Act No. 17-2.

The General Assembly also altered the bond covenant provision in Section 21 of Public Act No. 18-81: "An Act Concerning Revisions to the State Budget for Fiscal Year 2019 and Deficiency Appropriations for Fiscal Year 2018." That section provides:[8]

> Subsection (aa) of section 3-20 of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective May 15, 2018*):
>
> (aa) (1) For each fiscal year during which general obligation bonds or credit revenue bonds issued on and after May 15, 2018, and prior to July 1, 2020, shall be outstanding, the state of Connecticut shall comply with the provisions of (A) section 4-30a of the general statutes, revision of 1958, revised to January 1, 2017, as amended by section 704 of public act 17-2 of the June special session and section 20 of this act [9], (B) section 2-33c in effect on October 31, 2017, (C) section 2-33a of the general statutes, revision of 1958, revised to January 1, 2017, as amended by section 709 of public act 17-2 of the June special session, (D) subsections (d) and (g) of this section, revision of 1958, revised to January 1, 2017, as amended by sections 710 and 711 of public act 17-2 of the June special session,

[8] The underscored material indicates material added to General Statutes § 3-20(aa); deletions are indicated by brackets.

[9] Section 20 amended General Statutes § 4-30a to provide for annual adjustment to the threshold established for the transfer of revenue to the Budget Reserve Fund and also constrained the General Assembly's ability to amend the base threshold the future.

and (E) section 3-21 of the general statutes, revision of 1958, revised to January 1, 2017, as amended by section 712 of public act 17-2 of the June special session. The state of Connecticut does hereby pledge to and agree with the holders of any bonds, notes and other obligations issued pursuant to subdivision (2) of this subsection that no public or special act of the General Assembly taking effect on or after May 15, 2018, and prior to July 1, [2028] 2023, shall alter the obligation to comply with the provisions of the sections and subsections set forth in subparagraphs (A) to (E), inclusive, of this subdivision, until such bonds, notes or other obligations, together with the interest thereon, are fully met and discharged, provided nothing in this subsection shall preclude such alteration (i) if and when adequate provision shall be made by law for the protection of the holders of such bonds, or (ii) (I) if and when the Governor declares an emergency or the existence of extraordinary circumstances, in which the provisions of section 4-85 are invoked, (II) at least three-fifths of the members of each chamber of the General Assembly vote to alter such required compliance during the fiscal year for which the emergency or existence of extraordinary circumstances are determined, and (III) any such alteration is for the fiscal year in progress only.

(2) The Treasurer shall include this pledge and undertaking in general obligation bonds and credit revenue bonds issued on or after May 15, 2018, and prior to July 1, 2020, provided such pledge and undertaking (A) shall be applicable for a period of [ten] five years from the date of first issuance of such bonds, and (B) shall not apply to refunding bonds issued for bonds issued under this subdivision.

Thus, this amendment included: (1) a reduction from ten to five years for both the end date for the pledge concerning General Statutes § 3-20aa(1)(A)-(E) and the period for inclusion of the covenant in issued bonds falling within the scope of General Statutes § 3-20(aa)(2); and (2) express recognition that the General Assembly had altered elsewhere *in the same act* one of the statutes that was the subject of the covenant – General Statutes § 4-30a.

**F. The Revised Bond Cap Provision.**

Raised Bill No. 5590 was amended to address general bonding issues, including the bond cap, which amendment became Public Act No. 18-178, entitled "An Act Authorizing and Adjusting Bonds of the State for Capital Improvements, Transportation and Other

Purposes, Concerning the Bond Caps, Establishing the Apprenticeship Connecticut Initiative and Concerning the Functions of CTNext and Connecticut Innovations, Inc."

In final form, the amendment to the bond cap provision in Section 16 of Public Act No. 18-178 provides:

> Subsection (f) of section 3-21 of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2018*):
>
> (f) (1) (A) On and after July 1, 2018, the Treasurer may not issue general obligation bonds or notes pursuant to section 3-20 or credit revenue bonds pursuant to section 3-20j that exceed in the aggregate one billion nine hundred million dollars in any fiscal year. Commencing July 1, 2019, and each fiscal year thereafter, the aggregate limit shall be adjusted in accordance with any change in the consumer price index for all urban consumers for the preceding calendar year, less food and energy, as published by the United States Department of Labor, Bureau of Labor Statistics. (B) Any calculation made pursuant to subparagraph (A) of this subdivision shall not include (i) any general obligation bonds issued as part of CSCU 2020, as defined in subdivision (3) of section 10a-91c, or UConn 2000, as defined in subdivision (25) of section 10a-109c, (ii) any bonds, notes or other evidences of indebtedness for borrowed money which are issued for the purpose of refunding other bonds, notes or other evidences of indebtedness, (iii) obligations in anticipation of revenues to be received by the state during the twelve calendar months next following their issuance, or (iv) any indebtedness authorized pursuant to section 41 of this act.
>
> (2) (A) Not later than January 1, 2018, and January first annually thereafter, the Treasurer shall provide the Governor with a list of allocated but unissued bonds. The Governor shall post such list on the Internet web site of the office of the Governor.
>
> (B) Notwithstanding section 4-85, the Governor shall not approve allotment requisitions pursuant to said section that would result in the issuance of general obligation bonds or notes pursuant to section 3-20 or credit revenue bonds pursuant to section 3-20j that exceed in the aggregate one billion nine hundred million dollars in any fiscal year. Commencing July 1, 2019, and each fiscal year thereafter, the aggregate limit shall be adjusted in accordance with any change in the consumer price index for all urban consumers for the preceding calendar year, less food and energy, as published by the United States Department of Labor, Bureau of Labor Statistics. Not later than April 1, 2018, and April first annually thereafter, the Governor shall provide the Treasurer with a list of general obligation bond and credit revenue bond expenditures that can be made July first commencing the next fiscal year totaling not more than one billion nine hundred million dollars.

> Commencing July 1, 2019, and each fiscal year thereafter, the aggregate limit shall be adjusted in accordance with any change in the consumer price index for all urban consumers for the preceding calendar year, less food and energy, as published by the United States Department of Labor, Bureau of Labor Statistics. The Governor shall post such list on the Internet web site of the office of the Governor.
>
> (C) Any calculation made pursuant to subparagraph (B) of this subdivision shall not include (i) any general obligation bonds issued as part of CSCU 2020, as defined in subdivision (3) of section 10a-91c, or UConn 2000, as defined in subdivision (25) of section 10a-109c, (ii) any bonds, notes or other evidences of indebtedness for borrowed money which are issued for the purpose of refunding other bonds, notes or other evidences of indebtedness, (iii) obligations in anticipation of revenues to be received by the state during the twelve calendar months next following their issuance, or (iv) any indebtedness authorized pursuant to section 41 of this act.

Thus, as enacted, this amendment to the bond cap statute (General Statutes § 3-21(f)) added three exceptions to the calculation of the bond cap for any fiscal year after July 1, 2018:

> (ii) any bonds, notes or other evidences of indebtedness for borrowed money which are issued for the purpose of refunding other bonds, notes or other evidences of indebtedness,
>
> (iii) obligations in anticipation of revenues to be received by the state during the twelve calendar months next following their issuance, or
>
> (iv) any indebtedness authorized pursuant to section 41 of this act.[10]

As with all other provisions of Public Act No. 18-178 save one, Section 16 was "Effective July 1, 2018."[11]

**G. Timing of Enactment of Public Act Nos. 18-49, 18-81 and 18-178.**

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[10] Section 41 authorized the Bond Commission to issue bonds up to $250M for "transportation projects" in each of calendar years 2018 and 2019.

[11] The sole exception was Section 39, which concerned certain grants-in-aid to municipalities for the purposes set forth in General Statutes § 13a-175a(a) and was effective "from passage."

Substitute Senate Bill No. 11 (which became Public Act No. 18-49), House Bill No. 5590 (which became Public Act No. 18-178) and Senate Bill No. 543 (which became Public Act No. 18-81) were passed by the General Assembly on May 9, 2018 – the last day of the 2018 regular session.[12]

The Senate passed substitute Senate Bill No. 11 in the early morning hours of May 9. The House passed the bill later that day by a roll call vote on a consent calendar recorded at 10:42 p.m. The bill was transmitted in the ordinary course to the Secretary of the State, who in turn submitted it to the Governor. The Governor signed the bill on May 31, 2018. Thus, the "effective date" was May 31, 2018, but, as noted above, the amendment to the bond covenant statute was given an effective date of May 15, 2018.

The Senate Bill 543 was passed by the Senate by roll call vote recorded at 10:47 pm, and the House passed the bill in concurrence by roll call vote recorded at 11:21 pm. The rules were suspended and the bill was transmitted to the Governor, who signed it into law on May 15, 2018. The bond covenant section was given an effective date of May 15, 2018; the vast majority of the other provisions were given an effective date of July 1, 2018.[13]

The House passed substitute House Bill 5590 by roll call vote recorded at 10:48 pm, and the Senate passed the bill in concurrence by roll call vote recorded at 11:23 pm.

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[12] After the conclusion of legislative business on May 9, the House and the Senate met in joint convention in the early morning hours of May 10, 2018, following which the Secretary of the State adjourned the General Assembly *sine die.*

[13] The exceptions were Sections 20 and 21 (the bond covenant provision), which were effective May 15, 2018, Section 22, which was effective May 14, 2018, and a number of provisions (Sections 12, 33, 38-47, 53, 56-61, 66 and 67-70) that were effective "from passage."

The bill was transmitted in the ordinary course to the Secretary of the State, who in turn submitted it to the Governor. The Governor signed the bill on June 14, 2018. As noted above, the legislature gave all but one of the provisions a July 1, 2018 effective date.

**H. Issuance of Bonds Following the Amendments.**

After these bills were signed into law on May 15, May 31 and June 14, respectively, the State issued certain general obligation bonds on or about June 20, 2018.

By letter dated September 18, 2018, the Treasurer brought to the attention of the House leadership a perceived issue arising out of the drafting of the bond cap, and specifically what appeared to be the inadvertent change of the effective date from "effective from passage" to July 1, 2018. According to the Treasurer's letter:

> The effective date is important because the bond covenant pledges that no changes to the underlying statutes – including bond caps – may take effect between May 15, 2018 and July 1, 2023, and [general obligation] bonds were issued on June 20, 2018 that included the covenant. Thus, it appears that the delayed effective date nullified the exclusions contained in Public Act 18-178. So, instead of the exclusions taking effect upon passage on May 9th, before the statutory provisions related to the bond covenant were locked in, these exclusions may not apply as intended for another five years.

Sept. 18, 2018 Letter from Hon. D. Nappier to Hon. J. Aresimowicz, et al.

**I. The Conflict Between the Statutes.**

At first glance, it appears that the bonds issued on June 20, 2018 – as well as any bonds issued subsequent to May 15, 2018 while the bond covenant is in effect – are subject to the covenant language of Public Act No. 18-81, specifically that "no public or special act of the General Assembly taking effect on or after May 15, 2018, and prior to July 1, 2023, shall alter the obligation to comply with the provisions ... set forth in subparagraphs

(A) to (E), inclusive," of General Statutes § 3-20(aa)(1). Moreover, because the changes to the bond cap provision did not become effective until July 1, 2018, it appears that the new exclusions established by that provision could not be implemented by the Treasurer in calculating the bond cap without causing the State to violate General Statutes § 3-20(aa) and the bond covenant contained therein.

At the same time, when these issues are considered from the perspective of legislative intent, it is unlikely that the General Assembly would go to the lengths of amending the bond cap statute in a manner that would immediately offend the bond covenant statute, particularly in the very same legislative session in which it amended both provisions, and especially where two of the respective amendments began harmoniously in the very same bill. Rather, it appears that the resulting conflict was the result of a drafting error, oversight or lack of clarity brought about in the rush to pass important legislation in the final hour of the last day of the legislative session. The remainder of this memorandum discusses whether a court could recognize this incongruity in a manner that would allow the statutes to be construed together to effectuate the intent of the General Assembly.

## II. ANALYSIS.

### A. Applicable Principles of Statutory Construction.

In Connecticut, any effort to construe a statute must begin with the plain meaning rule codified at General Statutes § 1-2z. That rule provides:

> The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

Conn. Gen. Stat. Ann. § 1-2z. As instructed by the Connecticut Supreme Court:

> When construing a statute, our fundamental objective is to ascertain and give effect to the apparent intent of the legislature. In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of the case, including the question of whether the language actually does apply. In seeking to determine that meaning, General Statutes § 1–2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter.

*Garcia v. City of Bridgeport*, 306 Conn. 340, 349–50 (2012) (internal quotation marks and alterations omitted). "It is not the function of the courts to enhance or supplement a statute containing clearly expressed language. Rather, [courts] are obligated to construe a statute as written. Courts may not by construction supply omissions or add exceptions. It is axiomatic that the court itself cannot rewrite a statute. That is a function of the legislature." *Asia A.M. v. Geoffrey M., Jr.*, 182 Conn. App. 22, 33 (2018) (citations, internal quotation marks and alterations omitted).

**B. The Bond Covenant Statute is Ambiguous.**

In this case, the bond covenant provision is ambiguous. The central focus of the statute – the covenant – provides in relevant part that "no public or special act … taking effect on or after May 15, 2018 … shall alter the obligation to comply with the provisions of the sections and subsections set forth in subparagraphs (A) to (E), inclusive, of this subdivision." But the bond covenant statute itself is a public act that became effective "on" May 15, 2018 and, thus, a literal application of the words of the statute risks nullifying the statute from its inception.

While this internal conflict may be reconcilable in the form the statute was initially enacted,[14] the same cannot be said of the amendments to the bond covenant in Public Act No. 18-81 and Public Act No. 18-49 and their corresponding changes to General Statutes § 4-30a. Those amendments expressly altered the nature of the State's obligation, at least as to General Statutes § 3-20(aa)(1)(A). As those amendments were undisputedly effective ***on*** May 15, 2018, they are each an "act of the General Assembly *taking effect* on ... May 15, 2018 ... [that] alter[ed] the obligation to comply with the provisions and subsections set forth in subparagraph[] (A)." *See Duncan v. Walker,* 533 U.S. 167, 174 (2001) (statute should be construed in a way that "no clause, sentence, or word shall be superfluous, void, or insignificant") (internal quotation marks omitted).

The "taking effect" language is not defined in the covenant statute, and the use of that phrase creates a tension within the statute even before one considers the incompatibility of the bond covenant statute with the additional changes passed by the General Assembly on the same day. As demonstrated below, the "taking effect" language becomes even more ambiguous and produces an inherently unworkable result when those additional changes are taken into account. This poses a significant problem to a rational construction of the statute. *See State v. Reynolds*, 264 Conn. 1, 80-81 (2003) ("We construe statutes so as not to thwart their intended purpose; and in a manner that will not lead to bizarre or irrational consequences.") (internal quotation marks and citation omitted).

**C. The Bond Covenant Statute Conflicts with Other Laws.**

[14] To avoid the absurdity of this result, one would argue that the imposition of the obligation to comply with a statute does not "alter" the obligation to comply.

In addition to creating a conflict within General Statutes § 3-20(aa) itself, the amended covenant statute conflicts with other provisions passed by the General Assembly on May 9. To "give effect to the apparent intent of the legislature, a court consults not only the text of the statute at issue but also "its relationship to other statutes." *Gonzalez v. Surgeon*, 284 Conn. 554, 565-66 (2007); *see also* Conn. Gen. Stat. § 1-2z ("The meaning of a statute shall, in the first instance, be ascertained from ... its relationship to other statutes ....").

The bond covenant obligation relates exclusively to the five provisions of the General Statutes enumerated in subparagraphs (A) through (E) of § 3-20(aa)(1) (emphasis added):

> (A) section 4-30a of the general statutes, revision of 1958, revised to January 1, 2017, as amended by section 704 of public act 17-2 of the June special session **and section 20 of public act 18-81 and section 7 of public act 18-49**[15], (B) section 2-33c in effect on October 31, 2017, (C) section 2-33a of the general statutes, revision of 1958, revised to January 1, 2017, as amended by section 709 of public act 17-2 of the June special session, (D) subsections (d) and (g) of this section, revision of 1958, revised to January 1, 2017, as amended by sections 710 and 711 of public act 17-2 of the June special session, and (E) section 3-21 of the general statutes, revision of 1958, revised to January 1, 2017, as amended by section 712 of public act 17-2 of the June special session.

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[15] As the statutes have yet to be officially codified, the statute as quoted in the text is as it is published on Westlaw. The reconciliation of Public Act Nos. 18-49 and 18-81 reflected in the text is consistent with General Statutes § 2-30b. That statute directs that, where two or more acts are passed by the General Assembly in the same legislative session amend the same section of the General Statutes without a reference to the earlier amendment in the later amendment, "each amendment shall be effective except in the case of irreconcilable conflict." In the case of such a conflict, "the act which was passed last in the second house of the General Assembly shall be deemed to have repealed the irreconcilable provision contained in the earlier act." Thus, the arguable conflict created by the maintenance of a ten-year covenant period in Public Act No. 18-49 versus the five-year period enacted in Public Act No. 18-81, would be resolved by application of the five-year period set by Public Act No. 18-81 because it was passed last.

Implementing changes to any or all of these provisions was entirely consistent with the history of the bond covenant provision. By the very terms of General Statutes § 3-20(aa), as amended by Section 21 of Public Act No. 18-81, the General Assembly was free to change *any* aspect of the covenant provision or repeal it altogether *prior to* May 15, 2018. Such legislative action would impact neither the obligation to be undertaken by the State (which extended only to bonds or notes issued "on and after May 15, 2018") or the covenant to be pledged to future bond holders (which concerned only legislation "taking effect on or after May 15, 2018").

Consistent with this understanding, the General Assembly altered three of the five provisions listed in the covenant statute on May 9, 2018. The alterations of the obligation as to subparagraph (A), discussed above, were reflected elsewhere in Public Act 18-81 and in Public Act No. 18-49, as indicated by the underscored language in the text quoted above. The General Assembly also altered the obligations in subparagraphs (D) and (E) in Public Act No. 18-178, which was passed at virtually the same time as the 2018 Revised Budget Act. In order to give effect to those changes, the General Assembly *had* to intend that the new enactments applied to subparagraphs (D) and (E) of the amended bond covenant provision. Otherwise, ignoring the contemporaneous changes to Public Act 18-178 would yield the absurd result that the General Assembly passed a law directing the Treasurer to calculate the bond cap in a specific manner but did not intend that the Treasurer actually do so, or – equally absurd – that the General Assembly intended that the State violate the covenant that it had just enacted. *See Nizzardo v. State Traffic Comm'n*, 259 Conn. 131, 164 (2002) (noting "well established canon of statutory construction that

[i]n construing a statute, common sense must be used and courts must assume that a reasonable and rational result was intended").

Of course, the counter-argument is that the amendments brought about by Public Act 18-178 and elsewhere in Public Act 18-81 have meaning independent of the bond covenant. Specifically, the argument would contend that the General Assembly intended that the pre-amended bond cap statute (i.e. that established by Public Act No. 17-2 (June Sp. Sess.) would apply for the five-year period specified in General Statutes § 3-20(aa)(2), after which the "new" bond cap would take effect. Under this view, the pledge made in the bond covenant would apply only to those obligations "issued pursuant to subdivision (2)" of General Statutes § 3-20(aa). Pursuant to subdivision (2), those bonds are those issued "on or after May 15, 2018, and prior to July 1, 2020," and the pledge to be made is "applicable for a period of five years from the date of first issuance." Thus, the legislature intended that the bond cap would be calculated in accordance with amended General Statutes § 3-21(f) only after the expiration of the five-year period following the date of first issuance of bonds containing the covenant. This argument, however, does not withstand analysis.

Were this the intent of the General Assembly, the bond cap enacted in Section 712 of Public Act No. 17-2 would be in effect for all bonds issued on or after May 15, 2018 until the covenant period expired. However, the Treasurer's obligations under Section 712 of Public Act No. 17-2 did not begin until "[o]n and after July 1, 2018," which is the same date for commencement of the cap calculation as provided in Section 16 of Public Act No. 18-81. This observation is critical, because the General Assembly plainly did not intend the Treasurer's obligation to implement a bond cap to begin until the next full fiscal year

following adoption of the biennium budget in October 2017. So, there simply was no bond cap to calculate until after the start of the next fiscal year, which began on July 1, 2018. Yet, the covenant provision imposes an obligation on the part of the State with regard to the bond cap that pertains to "each fiscal year" during which bonds issued after May 15 remain outstanding. It therefore would not be possible for the Treasurer to comply with the bond cap requirement, and the corresponding covenant, for bonds issued after May 15, 2018 but before the start of the next fiscal year on July 1, 2018.

This disconnect is amplified by subparagraph (D) of the bond covenant statute, which concerns Section 710(d) of Public Act No. 17-2, General Statutes § 3-20(d). That provision established a procedure for the authorization and issuance of bonds authorized by the State Bond Commission. Much like the bond cap, it provided in relevant part that:

> For the calendar year commencing January 1, 2017, and for each calendar year thereafter, the State Bond Commission may not authorize bond issuances or credit bond issuances of more than two billion dollars in the aggregate in any calendar year. Commencing January 1, 2018, and each calendar year thereafter, the aggregate limit shall be adjusted in accordance with any change in the consumer price index ....

Section 42 of Public Act No. 18-178, however, replaced this direction with the following (underscored language is new):

> For the calendar year commencing January 1, 2017, and for each calendar year thereafter, the State Bond Commission may not authorize bond issuances or credit revenue bond issuances of more than two billion dollars in the aggregate in any calendar year. Commencing January 1, 2018, and each calendar year thereafter, the aggregate limit shall be adjusted in accordance with any change in the consumer price index .... <u>In computing such aggregate amount at any time, there shall be excluded or deducted, as the case may be, any indebtedness authorized pursuant to section 41 of this act.</u>

Section 41, in turn, directed bond allocations of up to $250 million dollars per year for transportation projects in calendar years 2018 and 2019. And Section 16(f)(1)(B)(iv) of Public Act No. 18-178 excludes such bonds from any calculation of the bond cap.

Any argument that the General Assembly intended Section 41 of Public Act No. 18-178, which applies *only* to calendar years 2018 and 2019, to be effective only after the State's covenant obligation expires (at least five years from the date of first issuance of bonds subject to the covenant) is, therefore, doomed to fail as inherently illogical. "It is a basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions.... [I]n construing statutes, we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous.... Because [e]very word and phrase [of a statute] is presumed to have meaning ... [a statute] must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant." *Lopa v. Brinker Int'l, Inc.*, 296 Conn. 426, 433 (2010) (internal quotation marks omitted).[16]

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[16] The practical implication of the exclusion of the transportation project bonds authorized in Section 41 of Public Act No. 18-178 from the State Bond Commission cap set by General Statutes § 3-20(d) is further evidence of the legislature's intent that the exclusions enacted in May 2018 apply to bonds issued going forward from May 15 and not upon expiration of the covenant obligation in 2023. Effective July 1, 2018, section 41 directs the State Bond Commission to allocate up to $250 million for transportation projects (the language used in Section 41 is different from the standard State Bond Commission statutory approval language – it requires that the transportation project bonds be allocated; it gives no discretion to the State Bond Commission except as to the total dollar amount of bonds to be allocated); and section 42 exempts that amount from the $2 billion State Bond Commission cap. The Bond Commission cap is calculated on a calendar year basis, however; in this case beginning January 1, 2018. Thus, by May 2018, bonds would have been allocated toward that cap at the time of the legislation, which legislation directed the State Bond Commission to authorize up to $250 million in bonds *without regard* to whatever amount had already been authorized. This would only be logical if the legislature also intended that its exemption of that amount from the State Bond

**D. Reconciliation of the Covenant and Bond Cap Statutes.**

From at least the perspective of the Treasurer, there is a conflict between the bond covenant statute and the bond cap statute depending upon how the bond covenant is interpreted. If the phrase "taking effect" means "effective date," it is not possible for the Treasurer to comply with the obligations imposed by the General Assembly in Public Act No. 18-178 without causing the State to violate the bond covenant. Connecticut's courts have provided ample guidance on the reconciliation of such a conflict.

"In construing two seemingly conflicting statutes, we are guided by the principle that the legislature is always presumed to have created a harmonious and consistent body of law .... Accordingly, [i]f two statutes appear to be in conflict but can be construed as consistent with each other, then the court should give effect to both." *Spears v. Garcia*, 263 Conn. 22, 32 (2003) (internal quotation marks omitted); *see also Nizzardo v. State Traffic Comm'n,* 259 Conn. 131, 157 (2002). "Rather than adopt [a] reading of ... statutory ... provisions to create a genuine conflict that would result in a nullification of one by the other, ... a reviewing court ... should seek to harmonize the legislation so as to avoid conflict." *Dodd v. Middlesex Mut. Assurance Co.*, 242 Conn. 375, 388 (1997); *see Shortt v. New Milford Police Dep't*, 212 Conn. 294, 301 (1989) ("[i]n ascertaining [legislative] intent, we deem the legislature to have intended to harmonize its enactment with existing common law and statutory requirements").

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Commission cap, passed at the same time, was intended to apply in calendar year 2018. Indeed, without providing for an exemption from the cap, it was certainly possible that the State Bond Commission could have exceeded its allocation cap by the time Section 41 was enacted, thus violating the bond covenant. This result could not have been the intent of the General Assembly, which is recognized only if the exceptions were intended to apply at once and not after a five-year delay.

The statutes can be reconciled—and effect can be given to all of their provisions—by examining the legislative intent behind the statutes and implementing that intent. That examination begins with a focus on the interplay between the introductory language to the bond covenant provision (§ 3-20(aa)(1)) of Public Act No. 18-81 and the introductory language to the bond cap provision (§ 3-21(f)(1)(A)) of Public Act No. 18-178. The bond covenant statute begins with a temporal limitation on the State's obligation to comply with the enumerated provisions; i.e. "[f]or each fiscal year during which [the affected bonds] shall be outstanding." Since the starting date for the affected bonds was not coterminous with the State's fiscal year, but rather began at the tail end – a month and a half *before* July 1 – it would never be possible for the State to comply with the obligation pledged in § 3-20(aa)(1) unless the obligation was intended to apply to an entire fiscal year. For example, bonds that were issued prior to May 15, 2018 may or may not have been issued in compliance with "the provisions of the sections and subsections set forth in subparagraphs (A) to (E), inclusive;" indeed, as noted above, one of those subdivisions, subdivision (A), was amended in Public Act No. 18-81. Thus, it is a fact that the State did not issue bonds in compliance with the statute prior to May 15, 2018. The position that the State's obligation under § 3-20(aa) began immediately on May 15, 2018, thus reads "[f]or each fiscal year" out of the statute. In interpreting a statute, however, a court must give effect to all of the words employed by the Legislature. *See Qi-Zhuo v. Meissner,* 70 F.3d 136, 139 (D.C. Cir. 1995) ("all words in a statute are to be assigned meaning, and … nothing therein is to be construed as surplusage"). The only fiscal year to which the State's guarantee of compliance could extend was a fiscal year that followed May 15, 2018, the first of which was the fiscal year beginning July 1, 2018.

Viewing the statute in this light leads to the path for a cohesive interpretation of both the bond covenant provision and the bond cap provision. First, turning back to the bond covenant provision, the only bonds actually encompassed within the covenant are those specified in § 3-20(aa)(2) of Public Act No. 18-81: bonds "issued on or after May 15, 2018, and prior to July 1, 2020." With regard to those bonds – and those bonds only – the State pledges that "no public or special act of the General Assembly taking effect on or after May 15, 2018, and prior to July 1, 2023, shall alter the obligation to comply with the provisions of the sections and subsections set forth in subparagraphs (A) to (E), inclusive, of this subdivision." Subparagraph (E) is the bond cap statute, as enacted by Section 712 of Public Act No. 17-2. But the "obligation" referenced is that single obligation set out in the first sentence of § 3-20(aa)(1): the obligation that "[f]or each fiscal year" the State will comply with the enumerated statutes.

Turning to the bond cap provision, that statute begins its directive to the Treasurer with a temporal restriction: "[o]n and after July 1, 2018, the Treasurer may not issue [bonds] that exceed in the aggregate one billion nine hundred million dollars in any fiscal year," excluding certain exceptions. Thus, the Treasurer's obligation under the bond cap statute is coterminous with the State's fiscal-year obligation under the bond covenant statute.

Moreover, the General Assembly designed the exceptions to the bond cap in both the amended and pre-amended versions of General Statutes § 3-21(f) to operate as exclusions from the "calculation" of the bond cap made by the Treasurer "pursuant to subparagraph (A) of" § 3-21(f)(1). Given that the subparagraph begins with the temporal

limitation "[o]n and after July 1, 2018," the General Assembly plainly did not contemplate such a "calculation" prior to July 1, 2018.

Thus, the conflicts inherent in the bond covenant provision itself and those between the bond covenant provision and the statutes affected by the covenant can be construed to operate harmoniously and in a manner that avoids the absurdities discussed above. *See generally J.E.M. AG Supply, Inc. v. Pioneer Hi–Bred Int'l, Inc.*, 534 U.S. 124, 143 (2001) ("when two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective") (internal quotation marks omitted). The key issue that remains, however, is reconciliation of that interpretation with the General Assembly's choice in describing the extent of the covenant, which was unartful. Specifically, at essentially the same time it pledged that the enumerated statutes would not be altered by any public or special act "taking effect on or after May 15, 2018," it altered some of those very provisions in statutes for which it specified effective dates *both on and after* May 15, 2018.

As noted above, two of the five commitments – specifically subparagraphs (D) and (E) – were in the process of being amended in substitute House Bill No. 5590 (Public Act No. 18-178), which the House already had passed at the time it took up Senate Bill No. 543 (Public Act No. 18-81). But most demonstrative of the legislature's intent are the changes to General Statutes § 3-20(aa)(1)(A) and contemporaneous alterations to the subject of that subparagraph – General Statutes § 4-30a. One of these alterations was pending in the same bill that contained the covenant provision—Senate Bill No. 543 (Public Act 18-81). The other was pending in substitute Senate Bill No. 11 (Public Act 18-49). By their terms, those amendments were effective on May 15, 2018. The covenant

statute, however, prohibits any public or special act "taking effect on … May 15, 2018." Thus, a construction of the "taking effect" language to mean "effective date" produces an absurd result.[17]

General Statutes § 2-32 defines the "effective date" of a public act as "the first day of October following the session of the General Assembly at which [it is] passed … unless otherwise therein provided." None of the provisions at issue were intended to have an October 1, 2018 effective date; each had express effective dates. Reading "taking effect" in this instance to signify "effective date" would produce the following effective dates:

- May 15, 2018 as to the amendments to the covenant statute in Public Act Nos. 18-49 and 18-81;
- May 15, 2018 as to the alteration of § 4-30a in Public Act No. 18-81;
- May 31, 2018 as to the alteration of § 4-30a in Public Act No. 18-49;
- July 1, 2018 as to the alteration of § 3-20(d) in Public Act No. 18-178;
- July 1, 2018 as to the alteration of § 3-21(f) in the Public Act No. 18-178.

In reconciling the provisions at issue, it is apparent that the General Assembly could not have intended that its reference to an act "taking effect on or after May 15, 2018" in General Statutes § 3-20(aa)(1) meant the "effective date" of such an act, as that term is employed in General Statutes § 2-32.

The phrase "taking effect," which gives rise to both the inherent tension in the covenant statute and the conflict between that statute and the bond cap, is not defined in

[17] This same reasoning extends to the entire covenant amendment, which the General Assemble provided would take effect on May 15. If the General Assembly intended "taking effect" to mean "effective date," the entirety of Section 21 of Public Act No. 18-81 is rendered a nullity.

Public Act No. 18-81.[18] There does not appear to be any significance to the May 15, 2018 date beyond its selection in Public Act No. 17-2 (June Sp. Sess.) as the effective date of the covenant statute. There is nothing in the legislative history that speaks directly to the meaning of "taking effect." The only legislative history informing the phrase is the statement on the floor of the Senate, noted above, that the intent of the legislature was to bind future legislatures to the statutory commitment and pledge to be made by the State in the covenant statute concerning bonds issued after May 15, 2018. Leaving aside whether or not this is a permissible exercise of legislative authority, there is no question that the target of this restriction is the legislature and that the acts being restrained are legislative acts.

But with or without considering the import of that limited history, once it is understood that the General Assembly could not have meant "effective date" in its use of the phrase "taking effect on or after May 15, 2018, and prior to July 1, 2023" the logical meaning of the phrase becomes clear. A statute "consists of words living 'a communal existence,' in Judge Learned Hand's phrase, the meaning of each word informing the others and 'all in their aggregate tak[ing] their purport from the setting in which they are used.' Over and over we have stressed that in expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *U.S. Nat. Bank of Oregon v. Indep. Ins. Agents of Am., Inc.*, 508

[18] The phrase does not appear to be used frequently in the General Statutes. Of particular note, however, is that it is also employed elsewhere in General Statutes § 3-20, specifically § 3-20(d)(1). Its use in that provision is not inconsistent with the construction of the phrase advocated in this memorandum.

U.S. 439, 454–55 (1993) (quoting *NLRB v. Federbush Co.,* 121 F.2d 954, 957 (2d Cir. 1941)) (alteration and internal quotation marks omitted).

Viewing the statutes in harmony, and giving effect to all of their provisions, and informed by the canon of construction that the legislature does not engage in useless or absurd acts, the "taking effect" language in Section 21 of Public Act No. 18-81 must be construed in a manner that focuses on the past, i.e. that which was known to the General Assembly, rather than the future, which was not known. Plainly, the pledge enacted by the legislature concerned legislative acts that had both begun and been completed prior to the May 15, 2018 date.

As a practical matter and by logical implication, the prohibition was intended to extend to any legislation other than that which the General Assembly had already passed in the 2018 regular session, which adjourned on May 9. In other words, viewed in proper context, the provision must be read to result in something akin to the following:

> The state of Connecticut does hereby pledge to and agree with the holders of any bonds, notes and other obligations issued pursuant to subdivision (2) of the subsection that no public or special act of the General Assembly ***passed on or after May 15, 2018***, and prior to July 1, 2023, shall alter the obligation to comply with the provisions and subsections set forth in subparagraphs (A) to (E), inclusive, of this subdivision ....

The proffered interpretation also draws import from the legislature's express reference to a "public or special act ***of the General Assembly*** taking effect ...." If by its use of the phrase "taking effect" the legislature had intended to refer to "effective date" within the meaning of General Statutes § 2-32 or the "upon passage" sometimes employed in our statutes, it need only have said "a public or special act taking effect ...." But in that case, its use of the qualifying phrase "of the General Assembly" would be mere surplus. The

proffered interpretation thus gives effect to all of the words employed by the legislature in accordance with the canon of construction that statutes must be construed, if possible, "such that no clause, sentence or word shall be superfluous, void or insignificant." *Nizzardo v. State Traffic Comm'n,* 259 Conn. 131, 158 (2002).

The only way to interpret this language in a manner that is faithful to the overarching intent of the General Assembly is to construe "taking effect" as employed in the specific context of this statute in a manner that reflects the meaning "passed by the General Assembly." This is the only interpretation of the language that accounts for the reality that the General Assembly could not have known, at the time of drafting the legislation or at the time of its passage, when the Governor would sign the legislation that, undisputedly, had been passed at the same time as the bond covenant statute. *See Gonzalez v. Surgeon*, 284 Conn. 554, 568 (2007) ("Indeed, in construing a statute, we must be mindful as to whether the construction brings about a practical result.").

## III. CONCLUSION.

There are various mechanisms that can be employed in an attempt to persuade a court to give effect to the intent of the General Assembly concerning the intersection of these statutes. The mechanism with the greatest chance of success is to illustrate for the court both the impossibility of the literal application of the conflicting statutes at the same time and the absurdity of the result obtained when the application of one statute essentially eviscerates the intent of the legislature in passing the other. In such circumstances, a court would be obligated to construe the statutes in a manner that would avoid the conflict, and, while we cannot opine with certainty how a court would rule on these issues, we believe

that can be accomplished through interpretation of the "taking effect" language in the covenant statute in a manner that reflects the intent of the legislature.