



## Fairfield Beach Access

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14 December 2017

Mr. Brian Carey, Conservation Director  
Sullivan Independence Hall, Second Floor  
725 Old Post Road  
Fairfield, CT 06824

### **RE: Open Spaces Regulations Review “OSRR”) Committee HB 6557, Liability for Recreational Use of Land (2011)**

Dear Mr. Carey,

We would be grateful if you would forward this message to the members of the OSRR Subcommittee.

During last night’s meeting (13 December 2017), members of the Committee expressed concern and a desire to discuss and evaluate potential liability to the Town if they (presumably: as agents), decided to take no action in response to complaints about interaction with dogs at the Lake Mohegan Open Space Area.

Kindly given the opportunity to contribute to the discussion a second time, I mentioned that the CT General Assembly had (2011) amended the state’s “Recreational Land Use Act” which offers protection to individuals, corporations, nonprofits, and private utilities for liability of use of private lands. The new recreational liability bill (H.B. 6557) extended the recreational liability protection to municipalities, and clarified the definitions of “land” and “recreational purpose” therein. The bill was signed into law by Governor Dannel P. Malloy (P.L. 11-211) in July of 2011.

The OSRR Committee members may wish to discuss that the bill focuses on passive recreation areas, and use for recreational purposes **without charging a fee for use.**

Please see: <https://www.cga.ct.gov/2012/sup/chap925.htm>.

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General Assembly

*File No. 709*

*January Session,  
2011*

Substitute House Bill No. 6557

*House of Representatives, May 3, 2011*

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING LIABILITY FOR THE RECREATIONAL USE OF LANDS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 52-557f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2011*):

As used in sections 52-557f to 52-557i, inclusive:

(1) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land;

(2) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty, except that if the owner is a municipality, political subdivision of the state, municipal corporation, special district or water or sewer district: (A) "Land" does not include a swimming pool, playing field or court, playground, building with electrical service, or machinery when attached to the realty, that is also within the possession and control of the municipality, political subdivision of the state, municipal corporation, special district or water or sewer district; and (B) "road" does not include a paved public through road that is open to the public for the operation of four-wheeled private passenger motor vehicles;

(3) "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises. "Owner" includes, but is not limited to, a municipality, political subdivision of the state, municipal corporation, special district or water or sewer district;

(4) "Recreational purpose" includes, but is not limited to, any of the following, or any combination thereof: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, snow skiing, ice skating, sledding, hang gliding, sport parachuting, hot air ballooning, bicycling and viewing or enjoying historical, archaeological, scenic or scientific sites.

|   |                        |                |
|---|------------------------|----------------|
| This act shall take effect as follows and shall amend the following sections: |                        |                |
| Section<br>1  | <i>October 1, 2011</i> | <i>52-557f</i> |

***JUD***

***Joint Favorable Subst.***

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact (see following):***

| <b>Municipalities</b>  | <b>Effect</b>  | <b>FY 12 \$</b> | <b>FY 13 \$</b> |
|------------------------|----------------|-----------------|-----------------|
| Various Municipalities | Cost Avoidance | Potential       | Potential       |

***Explanation***

Enactment of the bill may preclude costs of varying magnitude to (a) municipalities, (b) other political subdivisions of the state, (c) municipal corporations, (d) special districts, and (e) water or sewer districts as it extends limited immunity from liability for injuries occurring on certain recreational lands. Types of costs that would potentially be avoided include those associated with participation in legal proceedings, paying settlements and/or increased insurance premiums. For comparison purposes, two recent settled Connecticut lawsuits involving injuries of persons on recreational lands resulted in payments of \$2.9 million and \$8.0 million.

***The Out Years***

***State Impact:*** None

***Municipal Impact:***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis**

**sHB 6557**

***AN ACT CONCERNING LIABILITY FOR THE RECREATIONAL USE OF LANDS.***

**SUMMARY:**

This bill limits the liability of municipalities, other political subdivisions of the state, municipal corporations, special districts, and water or sewer districts that make certain types of land available to the public without charge for recreational purposes. Under the bill, these entities, unlike other landowners, remain liable regarding certain structures, fields, or roads on such entities' land. Specifically, the bill's liability limitation does not apply to:

1. swimming pools, playing fields or courts, playgrounds, buildings with electrical service, or machinery attached to the land, if these are in the municipality's or other entity's possession and control; and
2. paved, public, through roads that are open to the public for the operation of four-wheeled private passenger cars.

Existing law, unchanged by the bill, limits the liability of political subdivisions of the state in other circumstances (see BACKGROUND).

For all landowners (not just municipalities and the other entities listed above), the bill adds bicycling to the non-exclusive list of recreational purposes for which the landowner may make the land available to the public and enjoy limited liability.

EFFECTIVE DATE: October 1, 2011

**LANDOWNER RECREATIONAL LAND IMMUNITY**

By law, a landowner who makes land available to the public for recreational purposes without charging admission owes no duty of care to (1) keep the land safe for recreational purposes or (2) give any warning of a

dangerous condition, use, structure, or activity on the land to those entering for recreational purposes. Additionally, the law provides that such landowners do not thereby (1) make any representation that the land is safe for any purpose, (2) confer on the person using the land a legal status entitling the person to a duty of care by the owner, or (3) assume responsibility for any injury to a person or property that is caused by the landowner's act or omission.

This statutory immunity from liability does not apply to (1) willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity or (2) injuries suffered in any case where the landowner charges people who use the land for recreational purposes.

For purposes of these liability protections, "owner" includes possessors of a fee interest, tenants, lessees, occupants, or persons in control of the premises. "Charge" means the admission price or fee asked in return for an invitation or permission to use the land.

## **BACKGROUND**

### ***Related Case***

In *Conway v. Wilton*, 238 Conn. 653 (1996), the Connecticut Supreme Court ruled that municipalities are not "owners" under the Recreational Land Use Act (the statute that this bill amends) and are therefore not entitled to immunity from liability for injuries sustained on land they make available to the public without charge for recreational purposes.

### ***Liability of Political Subdivisions***

By law, political subdivisions of the state are generally liable for damages to person or property caused by: (1) the negligent acts or omissions of the political subdivision and its employees, officers, or agents acting within the scope of their employment or official duties; (2) negligence in performing functions that give the political subdivision profit or pecuniary benefit; and (3) the political subdivision's acts that create or help create a nuisance. But, no cause of action can be maintained for damages resulting from injury to any person or property from a defective road or bridge except as provided by law.

Except as otherwise provided by law, political subdivisions are not liable for damages caused by (1) acts or omissions of any employee, officer, or agent that constitute criminal conduct, fraud, actual malice, or willful misconduct or (2) negligent acts or omissions requiring the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law.

In addition, a political subdivision and its employees, officers, and agents acting within the scope of employment or official duties are not liable for damages resulting from:

1. the condition of natural land or unimproved property;
2. the condition of a reservoir, dam, canal, conduit, drain, or similar structures when used in a way that is not reasonably foreseeable;
3. the temporary condition of a road or bridge that results from weather, if the political subdivision has not received notice and has not had a reasonable opportunity to make the condition safe;
4. the condition of an unpaved road, trail, or footpath that provides access to a recreational or scenic area, if the political subdivision has not received notice and has not had a reasonable opportunity to make the condition safe;
5. the initiation of a judicial or administrative proceeding, unless it was filed or prosecuted without probable cause or with a malicious intent to vex or trouble;
6. the act or omission of someone other than the political subdivision's employees, officers, or agents;

7. the issuance, denial, suspension, or revocation of (or failure or refusal to take any such action on) any permit or similar authorization when the authority is a discretionary function by law, unless the action constitutes a reckless disregard for health or safety;

8. failure to make an inspection or making an inadequate or negligent inspection of any property, other than property owned by, leased by, or leased to the political subdivision, to determine whether it complies with or violates any law or contains a hazard to health or safety, unless (a) the political subdivision had notice of such a violation or hazard or (b) the failure to inspect or the inadequate or negligent inspection constitutes a reckless disregard for health or safety under all the relevant circumstances;

9. failure to detect or prevent environmental pollution by other people or entities; or

10. conditions on land the state sold or transferred to the political subdivision when such conditions existed at the time of sale or transfer (CGS § 52-557n).

***Related Bill***

sSB 43 (File 498), reported favorably by the Planning and Development Committee, limits the liability of municipalities, special taxing districts, and metropolitan districts that make their land available to the public without charge for recreational purposes. It also specifies that any state or local taxes collected under state law are not considered a charge for using the property. The bill also exempts from certain hazardous waste clean-up costs, fines, and penalties any municipality that acquires an easement over property it does not own in order to make it available to the public without charge for recreational use.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

|     |    |     |   |              |
|-----|----|-----|---|--------------|
| Yea | 45 | Nay | 0 | (04/15/2011) |
|-----|----|-----|---|--------------|

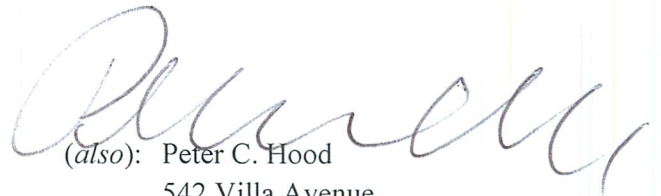
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Myself and other members of the public are grateful for the OSRR Committee's effort to allow us to participate in the ongoing discussion.

With best regards,



June E. Mastronardi  
537 Villa Avenue



(also): Peter C. Hood  
542 Villa Avenue