



Senate

General Assembly

File No. 498

January Session, 2011

Substitute Senate Bill No. 43

Senate, April 13, 2011

The Committee on Planning and Development reported through SEN. CASSANO of the 4th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING MUNICIPAL LIABILITY FOR LAND OPENED TO THE PUBLIC FOR RECREATIONAL PURPOSES.

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

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 Section 52-557f of the general statutes is repealed and the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

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

4 (1) "Charge" means the admission price or fee asked in return for
5 invitation or permission to enter or go upon the land, except that
6 "charge" does not include tax revenue collected pursuant to title 12 by
7 any owner;

8 (2) "Land" means land, roads, water, watercourses, private ways
9 and buildings, structures, and machinery or equipment when attached
10 to the realty;

11 (3) "Owner" means the possessor of a fee interest, a tenant, lessee,

12 occupant or person in control of the premises and includes any
13 municipality, as defined in section 7-148, any district, as defined in
14 section 7-324, any metropolitan district created by special act or
15 pursuant to sections 7-333 to 7-339, inclusive, and any railroad
16 company;

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

23 Sec. 2. (NEW) (*Effective October 1, 2011*) (a) For purposes of this
24 section, "charge" has the same meaning as provided in section 52-557f
25 of the general statutes, as amended by this act, "hazardous waste" has
26 the same meaning as provided in section 22a-115 of the general
27 statutes, and "pollution" has the same meaning as provided in section
28 22a-423 of the general statutes.

29 (b) Notwithstanding the provisions of chapter 445 of the general
30 statutes, any municipality that acquires an easement over property of
31 another for the purpose of making the property included in such
32 easement available to the public for recreational use without charge,
33 rent, fee or other commercial service shall not be liable for any fines,
34 penalties or costs of investigation or remediation with respect to any
35 hazardous waste, pollution or source of pollution on or emanating
36 from such property of another provided such hazardous waste,
37 pollution or source of pollution (1) occurred or existed on such
38 property prior to the municipality's acquisition of such easement, or (2)
39 was not caused by such municipality or by an agent of such
40 municipality.

41 (c) Any municipality that acquires an easement for recreational use
42 by the public as provided in subsection (b) of this section may
43 investigate and remediate any hazardous waste, pollution or source of
44 pollution on or emanating from the property included in such

45 easement in accordance with standards adopted under section 22a-
46 133k of the general statutes for remediation of property used for
47 recreational purposes and shall not be liable for any cost to investigate
48 and remediate property owned by another and not included in such
49 easement.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2011</i>	52-557f
Sec. 2	<i>October 1, 2011</i>	New section

PD *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:

Municipalities	Effect	FY 12 \$	FY 13 \$
Various Municipalities	Potential Cost Avoidance	Indeterminate	Indeterminate

Explanation

Enactment of the bill may preclude costs of varying magnitude to municipalities, special taxing districts or any metropolitan district, to the extent that 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.

Additional municipal costs may be precluded to the extent that the bill extends immunity from liability for fines, penalties or costs of investigation or remediation of hazardous waste, pollution or source of pollution on certain recreational lands.

The Out Years

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

OLR Bill Analysis**sSB 43*****AN ACT CONCERNING MUNICIPAL LIABILITY FOR LAND OPENED TO THE PUBLIC FOR RECREATIONAL PURPOSES.*****SUMMARY:**

This bill 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.

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 landowner does 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.

The 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, current law defines “owner” as the possessor of a fee interest, tenant, lessee, occupant, or person in control of the premises. The Supreme Court ruled that municipalities are not “owners” under these provisions (*Conway v. Wilton*, 238 Conn. 653 (1996)). The bill expands this definition to include any (1) town, city, borough, consolidated town and city, and consolidated town and borough, (2) special taxing district, and (3) metropolitan district created by special act or under the statutes. It also explicitly includes railroad companies in the definition.

By law, “charge” means the admission price or fee asked in return for an invitation or permission to use the land. The bill specifies that any state or local taxes collected under state law are not considered a charge for using the property.

LIABILITY PROTECTIONS FOR MUNICIPALITIES THAT ACQUIRE AN EASEMENT ON CONTAMINATED PROPERTY FOR RECREATIONAL USE

The bill 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. Specifically, the bill exempts the municipality from liability for investigation and remediation costs and any fines or penalties arising from any pollution or hazardous waste on the property as long as the contamination (1) occurred or existed on the property before the municipality acquired the easement or (2) was not caused the municipality or its agent.

The bill further provides that any such municipality may investigate and remediate any hazardous waste and pollution on the property included in the easement, following Department of Environmental Protection (DEP) standards for doing so, and is not liable for the investigation and remediation costs for property not included in the easement.

Under the bill, "pollution" is anything discharged by or deposited in any public or private sewer, or that otherwise comes in contact with any waters, that contaminates or causes a significant and harmful change in the temperature of any state waters. "Hazardous waste" means any waste that poses a present or potential hazard to human health or the environment when improperly handled.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Substitute

Yea 19 Nay 1 (03/25/2011)