

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

Legislation before the Judiciary Committee on April 4, 2011	Support/ Oppose
H.B. 6557: AN ACT CONCERNING MUNICIPAL LIABILITY FOR THE RECREATIONAL USE OF LANDS.	Support

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

My name is Eric Hammerling and I am the Executive Director of the Connecticut Forest & Park Association, the first conservation organization established in Connecticut in 1895 and a leading advocate for the original Recreational Land Use Act of 1971. CFPA has offered testimony before the Legislature on issues such as sustainable forestry, state parks and forests, trail recreation, natural resource protection, and land conservation every year since 1897.

I'd like to start by acknowledging the leadership and extra efforts of Representative David Baram for his work to bring forward H.B. 6557. Since the public hearing in West Hartford where the MDC considered closing its recreational lands last July (and over 700 people attended to keep access to those lands open), Representative Baram has worked diligently to broker a compromise that would increase the protection against liability for municipalities on recreational lands in a reasonable way. Representative Baram has been a problem-solver who has met on numerous occasions both with advocates for protecting and increasing recreational opportunities and with leaders from the trial lawyers association, the only organized opposition to this common sense reform. Much thought and work has gone into H.B. 6557, and we urge the Committee's support.

CFPA cares passionately about preserving access to municipal lands because municipalities and municipal water companies own over 150,000 acres (estimated) that support public recreational activities across the state. Considered as a group, municipalities are the state's second largest landowners behind the State, and at CFPA we work closely with many towns because over 50 miles of the 825-mile long Blue-Blazed Hiking Trail System (built and maintained by CFPA volunteers) traverse municipal properties.

There are many reasons why we urge you to restore recreational liability protection to municipalities:

1. **Municipalities were once considered to be owners.** For 25 years, municipalities were considered to be "owners" under the Act as was reinforced in *Manning v. Barenz* (1992). However, when the ruling in *Manning v. Barenz* was reversed by *Conway v. Wilton* (1996), it showed that municipalities were no longer considered to be owners unless the Legislature clarified this in the Statute.
2. **Municipalities will close access to recreational areas.** Shortly after *Conway v. Wilton*, at least 25 towns closed, restricted, or held-off on acquiring open space due to liability concerns. In the wake of the \$2.9 million MDC jury verdict, \$8 million Waterbury sledding settlement, and other cases, it is no surprise that municipalities are either considering closures or over-scrutinizing openings of recreational lands.
3. **Municipalities will be discouraged from developing or opening new recreational areas.** In his testimony before the Environment Committee in February, the First Selectman of Harwinton stated:

Increased liability concerns will also be an important factor in determining whether we should move forward with any new recreational facilities or the purchase and protection of open space lands. Open space lands and ponds and other water resources can be difficult to monitor to ensure the safety of recreational users. Many small towns simply don't have the resources to ensure that trails are always free from fallen limbs or debris that may pose a safety risk to hikers and bikers.

4. **Economic benefits from recreation.** In New England alone, the outdoor recreation industry contributes \$22.9 billion to the economy and supports over 270,000 jobs. In addition, real estate values are bolstered by proximity to recreational areas. What happens to those benefits and values when areas like the MDC are closed?
5. **Other New England states have done this.** All 50 states have recreational liability statutes and our neighboring New England states Massachusetts (Ch. 21§17C(b)) and Rhode Island (Gen.§32-6-2 (3)) include municipalities as owners with the same liability protection as other landowners. This means that Connecticut residents will go out of state (and recreational visitors will diminish) if there are more recreational opportunities offered elsewhere.
6. **Policy consistency.** It does not make sense to single-out municipalities to not receive liability protection if the goal of the Recreational Land Use Act is to encourage public recreation free of charge on all lands.
7. **H.B. 6557 does not offer total/absolute immunity.** Municipalities would still be liable "for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity," and in the case of swimming pools, play grounds, and tennis courts they would be held to the current standard.
8. **We all pay for these lawsuits.** It does not make sense to put municipalities in the position of having to spend money to defend and settle claims for recreational injuries that they cannot possibly prevent. Under current law, despite having some sovereign immunity protection, municipalities are forced to defend every lawsuit. Every property owner pays the price for these claims and settlements as well as for increased insurance premiums and deductibles.
9. **Where will the children play?** One of the reasons for our nation's youth obesity crisis (and perhaps attention deficit disorder as well) is the large number of children who are addicted to TV and electronic games. Kids need safe outdoor areas for free play, and municipal lands are often the only lands available.

RESTORE RECREATIONAL LIABILITY PROTECTION FOR MUNICIPALITIES 9.24.2010

In Connecticut, municipalities have protected over 75,000 acres for open space/recreation, and over 1,000 miles of recreational trails wind through a mix of state, municipal, and private lands. However, due to recreational liability concerns, municipalities are considering restrictions to recreational access on their lands. Potential exposure to costly personal injury lawsuits has made municipalities skittish on recreational liability. Towns should not have liability for recreational accidents as long as they do not charge and negligence is not involved. We ask the General Assembly to fix this problem once and for all.

Recreational Liability in Connecticut

With passage of the Connecticut Land Use Recreation Act in 1971 (C.G.S. § 52-557f et seq.), the General Assembly recognized the importance of encouraging landowners to open their lands to the public by protecting landowners from personal injury lawsuits. For 25 years after the passage of the Act, towns were considered to be included under the Act as landowners.

Why doesn't the Recreational Liability Law Include Municipalities?

Ever since a 3-2 Supreme Court decision in *Conway v. Wilton* (1996) which overturned previous holdings of the court, municipalities (including entities such as the MDC, a "nonprofit municipal corporation") are no longer considered "owners" for this purpose and therefore are not covered under the Statute. Fortunately, the statute still provides strong protection for private, corporate, and utility landowners who host recreational activities on their lands without charging a fee. Similar liability protection is available to the State when an incident related to recreational use occurs on state-owned land (C.G.S. § 4-160). Given the existing protections for private, corporate, utility, and state landowners, omitting municipalities from protection does not make sense.

Why Must the General Assembly Fix the Recreational Liability Law for Municipalities?

- There are many recent examples where recreational liability lawsuits have had a chilling effect on municipalities providing recreational activities on municipal lands:
 - In July, 2010 the MDC revisited its recreational access policies and considered closure of its lands to the public in response to a \$2.9 million jury verdict found for a mountain biker who crashed into a gate at the West Hartford Reservoir;
 - In August, 2010, Waterbury lost an \$8 million verdict to a person who crashed into a metal bench while snow tubing at Fulton Park. In response, Middlebury is considering the closure of its most popular sledding area near Town Hall;
 - The town of Litchfield is opposing the opening of the Litchfield Greenway bicycle trail until issues of liability can be clarified; and
 - The town of Sharon is concerned about its exposure to liability as it considers a canoe/kayak access point along the Housatonic River.
- Under existing statutory and common law protections against liability, municipalities are still forced to incur expenses associated with settling or defending personal injury lawsuits. Irrespective of whether these lawsuits have merit, the expenses are paid for by ALL OF US.
- It would be poor public policy for the state to encourage municipalities to conserve land, provide bonding/funding for that purpose, and then support policies which lead to municipalities closing their lands to recreational access due to liability concerns (e.g., the State has held the policy of preserving 21% of the state's land area for over a decade).
- Therefore, the more personal injury lawsuits that are brought against municipalities, the greater the risk that the municipalities will close, restrict, or decide not to open recreational lands.

We ask the General Assembly to preserve public access to municipal lands for recreational purposes by restoring to our towns the liability protection that is available to State and private landowners!

SUPPORTERS OF RESTORING RECREATIONAL LIABILITY PROTECTION FOR MUNICIPALITIES

American Heart Association
Appalachian Mountain Club - CT (AMC-CT)
Benidorm Bikes
Berlin Bicycle
Biker's Edge
BikeWalkCT
Central Connecticut Regional Planning Agency (CCRPA)
Central Naugatuck Valley Council of Governments
Central Wheel Bike Shop
City of Hartford
Clarke Cycles
Collinsville Canoe & Kayak
Connecticut Association of Conservation and Inland Wetlands Commissioners (CACIWC)
Connecticut Conference of Municipalities (CCM)
Connecticut Forest & Park Association (CFPA)
Connecticut Fund for the Environment
Connecticut Horse Council (CHC)
Connecticut Land Conservation Council (CLCC)
Connecticut Recreation and Parks Association
Connecticut Water Works Association
Council of Governments of the Central Naugatuck Valley
Council of Small Towns (COST)
Eastern Mountain Sports
Farmington Canal Rail-to-Trail Association
Farmington Valley Trails Council
Fleet Feet Sports
Friends of CT State Parks
Hartford Track Club
Harvey & Lewis Opticians
Horst Engineering & Manufacturing Company
Housatonic Valley Association (HVA)
Housatonic Valley Council of Elected Officials
Internat'l Mountain Biking Association (IMBA)
League of American Bicyclists
Lebanon Rails to Trails Committee
Litchfield Hills Council of Elected Officials
Lyman Kitchens
Manchester Cycle Shop
Mindful Path, LLC
New England Mountain Biking Association - CT Chapter (NEMBA - CT)
New England Ski and Scuba
New Haven Urban Design League
Northwestern Connecticut Council of Governments
Old Goat Running Club
Pedal Power
Plainville Greenway Alliance
Preston Parks and Recreation Department
Ragged Mountain Foundation
REI
Rivers Alliance of CT
Road Runners Club of America - CT Chapter
Sartorius Sports
Savethemdctrails.org
Sierra Club - CT Chapter
Sporthouse Inc.
Storrs Center Cycle
Suburban Sports
The Alliance for Biking and Walking
The Beat Bike Blog
The Bicycle Cellar
The Bike Shop
Thompson Trails Committee
Thread Rolling Company
Tolland Bicycle
Town of Middlebury
Town of Oxford
Yankee Pedalers Bicycle Club
Upper Housatonic Valley National Heritage Area
Windham Region Council of Governments