

STATEMENT

INSURANCE ASSOCIATION OF CONNECTICUT

Judiciary Committee

April 4, 2011

SB 1231-An Act Concerning Notice Of An Action Regarding A Defective Highway, Bridge,
Sidewalk, Road Or Railing

SB 1232-An Act Concerning Municipal Immunity For The Negligent Acts
Or Omissions Of Employees, Officers And Agents

HB 6555-An Act Concerning Civil Actions Against The State And Municipalities For The
Sexual Assault Of Children

HB 6557-An Act Concerning Liability For The Recreational Use Of Lands

The Insurance Association of Connecticut, IAC, is opposed to the following bills:

SB 1231, SB 1232 and HB 6555. The IAC supports the concept contained in HB 6557.

The IAC is opposed to SB 1232 and HB 6555 which seek to unnecessarily alter the sovereign immunity landscape and subject cities and towns to protracted litigation. SB 1232 seeks to needlessly narrow the sovereign immunity for municipalities. Currently, public employees enjoy immunity from negligent acts or omissions which may occur through the exercise of judgment or discretion but not ministerial acts. SB 1232 seeks to delineate between negligent acts and omissions which involve the exercise of judgment or discretion in the planning or decision-making level from those acts performed at the operational level. Acts that fall within the planning or decision-making level would still enjoy immunity, however, any act that is considered an operational level function would not be entitled to the protections afforded by sovereign immunity. There is no demonstrated need to distinguish these acts. Why should the exercise of judgment or discretion be treated any differently at the operational level than a similar act that was done during the planning and decision making phase? Sovereign immunity was adopted to encourage town employees to act in the best interests of the town. To remove such protections shall unjustly hamstring municipalities.

SB 1231 unreasonably will change the trigger and extend the amount of time when a party must notify a town of a potential claim involving an injury allegedly caused by a highway defect. Currently, the trigger for the date of such a notice is the date of loss. However, SB 1231 seeks to change the trigger to when a police report regarding the incident is filed. There are no requirements when such a report must be filed, nor is there a requirement that a report even be filed. It is not clear what a "filed" police report even means. It is important to note that the police report itself does not establish negligence or any other cause of action. It is just one piece of evidence in a party's case. It does not make any more sense to toll the notice provision for a police report than for a medical report, private investigator report, witness statement or any other piece of evidence that might be used in a case. There is nothing to preclude a plaintiff from noticing the town of a potential claim absent a report. Even in those situations where a police report takes an extended period of time to complete, like in fatalities or accident reconstructions, the plaintiff should have enough preliminary information to provide notice to a municipality of a potential claim. SB 1231 will unnecessarily create different notice requirements for every single highway defect claim in which the police are involved.

The IAC supports HB 6557 which seeks to expand sovereign immunity for public entities that permit recreational use of their lands. The Recreational Land Use Act currently only provides immunity to private landowners, utilities and corporations who open their land to the enjoyment of the public. Municipalities should also enjoy the immunity provided the private sector. Municipalities maintain a vast amount of open space suitable for recreational use. Granting such an entity the same level of protection as the private landowner benefits the public and the municipalities.