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Hearing Date: 4/4/11
Bill No.: 1232

TO: MEMBERS OF THE JUDICIARY COMMITTEE

FROM: THE CONNECTICUT TRIAL LAWYERS ASSOCIATION

RE: SUPPORT OF HB1232, AAC MUNICIPAL LIABILITY FOR THE
NEGLIGENT ACTS OR OMISSIONS OF EMPLOYERS OFFICERS AND
AGENTS

It is the position of the Connecticut Trial Lawyers Association that SB 1232 should be enacted to clarify and correct the application of CGS 52-557n.

As currently enacted the statute protects municipalities from acts or omissions by officials "which require the exercise of judgment or discretion as an official function of the authority impliedly granted by law." **At present the statute is being interpreted in a manner beyond its original meaning and intent.**

Its current application is also contrary to public policy in that it thwarts the claims of persons injured as a result of the negligence of public officials even when the acts or omissions of those officials are operational and involve little or no planning or decision making.

The current state of the law also creates a disincentive for municipalities to formulate or promulgate rules, regulations, policies, procedures or directives that would promote efficient government and public benefit, and, most importantly, protect the public from injury. Section 52-557n was enacted to protect municipal officials from liability when they were exercising judgment for the reason that subjecting officials to liability in such instances would "cramp the exercise of official discretion" and that officials should be "unhampered by the fear of second guessing" in their official functions. The law has been applied, however, to shield the most menial and commonplace tasks of public employees even when the danger of injury to the public is significant. Plaintiffs are currently required to plead and prove that the act or omission of a municipal employee which causes them injury is "ministerial" and not "discretionary".

The courts have stated that unless the act of a municipal official is to be "performed in a prescribed manner without the exercise of judgment or discretion" no claim is viable. Municipalities have taken the position that unless there is a charter provision, statute, rule, regulation, ordinance, policy or directive requiring a municipal official to perform a specific task in a specific manner the task is "discretionary".

This has led to absurd results. In one case the court found a teacher's opening a door on a student was "discretionary" because there was no policy as to how a teacher should open a door. *Colon v. Board of Education*, 60 Conn. App.183. In defense of such cases municipalities are placed in the unusual position of showing that they had no plan, procedure, policy or directive which required action. In one recent case a New London resident fell into a pit at the Transfer Station due to debris, oil, garbage and the lack of railings. The court found the City immune based in part on the affidavit from the Town's Manager who said the town had "no policy" as to the "frequency and manner in which the station is to be maintained and/or inspected." *Lang v City of New London* (CV095011549 2/18/11) In another case a person injured by a rolled up rug at a Town Pool was prevented from pursuing a claim because an affidavit from the Town averred that it was in the "sole discretion of maintenance staff where to place a rolled up rug." *Bashow v Town of Glastonbury* (12/7/10 CV 0950322945). In still another case a plaintiff injured inside a town school on slush, melted snow and water was prevented from pursuing a claim since the town had no explicit policy regarding its removal. *Melesko v Board of Education* (8/6/10 CV 105034485S). This was distinguished from a previous case in which it was found that the duty to clear snow and ice was ministerial when there was an explicit town policy to remove it. *Koloniak v Board of Education* 28 Conn. App.277.

All a municipality must do to avoid liability is to ensure there are no rules, policies, directives or procedures governing a particular conduct. Even when there is an ordinance requiring maintenance and repair if the ordinance fails to prescribe the exact manner and timing of inspection and maintenance activities it will be deemed discretionary and not actionable. *Nadolney v. Town of Plainville* (7/8/10 CV 075003829); *Grignano v Milford* 106 Conn. App. 698.

The law is in the unusual position of encouraging municipalities to have no plans, policies or procedures in place and to make whatever procedure (such as maintenance and inspection) haphazard. **As a result more injuries are likely to result to the residents of Connecticut towns and cities since by doing less (and not more) the municipalities insulate themselves from claims.**

Even the smallest tasks can be deemed discretionary if the timing or method of performance can be decided by the municipal employee. It is difficult to see how the law comports with the intent of the statute to shield municipal employees in their "official function". Clearly the statute was designed to protect the "second guessing" of municipal official decisions that involve planning and decision making and not operational negligence.

This bill will clarify the law in this respect and is good public policy.

PLEASE SUPPORT SB1232, AAC MUNICIPAL LIABILITY FOR
THE NEGLIGENT ACTS OR OMISSIONS OF EMPLOYERS OFFICERS AND AGENTS
