



State of Connecticut

HOUSE OF REPRESENTATIVES

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February 14, 2011

Dear Chairpersons Senator Cassano and Representative Gentile, and Members of the Planning and Development Committee,

The issue of recreational use on public or quasi-public lands is very important to the residents of Bloomfield and Windsor whom I represent as part of the 15th Assembly District. When the MDC threatened to close its West Hartford and Bloomfield Reservoirs to the public for recreational purposes, I spoke in favor of limited immunity as a way of providing more protection to our municipalities and special districts, and to preserve the public's use and enjoyment of such properties. That is why I introduced House Bill 5315 which has been referred to the Judiciary Committee.

House Bill 5315 is essentially the same as SB 43 and 90, and HB 5254 all of which are before you today. All Bills seek to amend the definition of "Owner" in Connecticut General Statutes 52-557f, to include municipalities, quasi public agencies, and special districts providing sewer and water services.

The amendment to Section 52-557f will prevent frivolous lawsuits so that municipalities and quasi public agencies will feel less threatened to invite members of the public to use their properties for recreational enjoyment.

A recent lawsuit against the MDC by Maribeth Blonski who rode her bicycle into a closed gate, demonstrates the risk and fear towns and special districts have of incurring exorbitant costs of insurance and litigation for incidents that allege questionable municipal negligence or nuisance. The Statute and the proposed amendments, do not however, provide blanket immunity to municipalities and quasi public agencies. Section 52-557h provides for municipal liability in instances of "willful" or "malicious" failure to guard or warn against dangerous conditions, use, structure or activity. It appears that courts have generally interpreted incidents of "willful" or "malicious" conduct to include

situations where a municipality intentionally creates a nuisance or hazard, or fails warn, or to correct or abate a hazardous situation which it has known about.

Additionally, under Section 52-557i, a recreational user of such land continues to have an obligation to exercise care for his or her use and activities. Some recreational uses have risk, and municipalities should not be responsible for every accident just because it happens on public land.

Simply put, under House Bill 5315 and the Bills before you today, municipalities and special districts will only be liable for negligent acts that constitute willful or malicious negligence in the use of their lands for recreational purposes.

It is important to remember that Special Districts like the MDC are only chartered to supply water and sewer services. Opening their vast reservoir lands (MDC over 10,000 acres at a half – dozen sites) to the public is not mandated. Likewise, towns and cities certainly have discretion to close recreational lands for public use if they deem it necessary to avoid costly litigation and expense. Creating some limited immunity will help promote public use, all while holding municipalities liable for the higher degree of negligence defined as malicious or wanton.

By eliminating liability for alleged ordinary negligence or nuisance, towns will feel more secure in opening lands for recreational purposes like hiking, biking, picnicking, and educational uses. Fiscal security will result from less frivolous law suits, litigation expenses, and insurance costs. As a result, the public will continue to have use and enjoyment of such properties like MDC Reservoir lands in West Hartford and Bloomfield. It is a good compromise!

I urge you to support the Recreational Immunity Bills before you today, as well as House Bill 5315 submitted by me, all of which will accomplish these goals.

Respectfully,



David Baram
State Representative 15th District