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March 29, 2012

Judiciary Committee
Connecticut General Assembly
Legislative Office Building
Hartford, CT

Re: Public hearing on March 29, 2012 for R.B. No. 445

Dear members of the Judiciary Committee:

I write in opposition to R.B. No. 445. I have practiced environmental and land use law in Connecticut since 1981. For 18+ years I was an assistant attorney general in the Environment Department of the Attorney General's Office. There I had numerous occasions to defend the state from claims of injury from persons using state park lands. Statutory law provides immunity to the State of Connecticut from claims arising from recreational activities on state land, as it does for private owners of land.

Last year the legislature, in passing Public Act 11-211, recognized that no public purpose was served to protect the State of Connecticut and private owners of land from exposure to liability when offering the public recreational use of their land, while municipalities were not similarly shielded from liability.

The purpose of granting immunity is to encourage landowners to make property available for recreational activities. It makes no sense to encourage private landowners and the state, while excluding municipalities, which are, after all, subdivisions of the state. For that reason alone, we should not return to a zigzag of liability which singles out and burdens municipalities when opening land to recreational use.

Additionally, Raised Bill No. 445 uses terms not susceptible to a single meaning. For instance, the bill proposes to exempt a municipal "boardwalk." Was the intent a boardwalk the size of Atlantic City's? What you will often encounter on hiking trails in Connecticut are simply planks placed in strategic places on trails. The boardwalks serve a dual purpose, to protect the hiker's boots from slogging through mud *as well as* to protect the wetlands, bog or intermittent stream bed, including the plants and animals in those habitats, from damage. In fact, boardwalks which do not change the "natural and indigenous character" of wetlands or water bodies are exempt from the state wetlands law permit requirement. C.G.S. § 22a-40(b). If this bill is passed a municipality is less likely to be held liable if it installs no boardwalks of any sort. Towns will have no incentive to undertake these simple, sensible solutions which have served to protect wetlands and watercourses with minimal impact on the environment.

Similarly, the term "public beach" is inserted into lands not afforded immunity from liability. According to Random House Webster's Dictionary a beach is simply "an expanse of sand or pebbles along a shore." If Raised Bill No. 445 is passed, municipal liability is created when an injury occurs on the beach, *but not on the trail leading to the beach and not in the water reached from the beach*. What public policy is served by creating liability in the transition area between the trail (the land) and the lake (the water)?

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March 29, 2012

Page 3 of 3

The legislature got it right last year in eliminating most of the disparities in liability between private, state and municipal landowners. The public interest is not served by reintroducing and re-establishing the inequitable treatment of municipal landowners.

Thank you for your consideration of my comments.

Sincerely,

Janet P. Brooks

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