Bill as Introduced

SB 169 – AS AMENDED BY THE SENATE

04/03/03 1010s

2003 SESSION

03-1137
06/10

SENATE BILL ***169***

AN ACT relative to frivolous actions against the state concerning state construction projects.

SPONSORS: Sen. Clegg, Dist 14; Sen. Morse, Dist 22; Rep. Dickinson, Carr 4; Rep. E. Smith, Ches 26; Rep. Letourneau, Rock 77; Rep. Packard, Rock 75

COMMITTEE: Transportation

ANALYSIS

In a suit brought concerning a state construction project, this bill allows the prevailing party to recover costs, attorneys' fees and damages that include any increased construction costs incurred by the state.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 169 – AS AMENDED BY THE SENATE

04/03/03 101s

03-1137
06/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT relative to frivolous actions against the state concerning state construction projects.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Purpose. The general court finds that it is in the interests of the state that state construction projects be able to proceed without delay. Legal actions that unnecessarily delay state construction projects increase taxpayer expense and merit limitation.

2 New Section; Frivolous Actions Relative to State Construction Projects. Amend RSA 507 by inserting after section 15 the following new section:

507:15-a Frivolous Actions Relative to State Construction Projects.

I. If, upon the hearing of any action against the state pertaining to a state construction project, which has commenced after the necessary state and federal approvals for construction have been issued, it appears to the court that the action is frivolous or intended to otherwise harass or intimidate the prevailing party, then the court, upon motion of a prevailing party or on its own motion, may order summary judgment or other relief against the party who brought such action, and award the amount of costs and attorneys' fees incurred by the prevailing party. Costs shall include, but not be limited to, increased construction costs incurred by the state.

II. For purposes of this section, "state construction project" shall mean a capital budget project.

3 Effective Date. This act shall take effect January 1, 2004.

Feb copy

LBAO
03-1137
4/15/03

SB 169 FISCAL NOTE

AN ACT relative to frivolous actions against the state concerning state construction projects.

FISCAL IMPACT:

The Department of Transportation indicates this bill, as amended by the Senate (**Senate Amendment #2003-1010s**), will increase state highway fund revenue by $406,000 in FY 2004, $543,200 in FY 2005 and by an indeterminable amount in each year thereafter. There will be no fiscal impact on state, county and local expenditures or county and local revenues.

METHODOLOGY:

The Department (DOT) assumes that for projects that have gone through a lengthy and rigorous approval and public participation process that are then subject to court challenges, such court challenges will be deemed frivolous or harassing in nature. In the next biennium, it is probable that three projects will be subject to court challenge: Troy By-Pass, Bedford-Manchester-Londonderry Airport Access Road, and Salem-Manchester I-93 widening. The Department estimates that costs to the state will include Attorney General costs, DOT and consultant engineering, and potential construction delay costs. The DOT estimates for FY 2004 that the Troy project will incur recoverable costs of $25,000 and the Bedford Manchester-Londonderry project will incur recoverable costs $381,000. DOT further estimates that for FY 2005, the Salem-Manchester project will incur recoverable costs of $543,200. The Department did not estimate beyond FY 2005.

Amendments

Rep. Keans, Straf. 67
April 29, 2003
2003-1425h
06/09

Motion OTP
failed 8-10
Minority

Amendment to SB 169

Amend the bill by replacing section 2 with the following:

2 Penalties for Frivolous Actions; State Construction Projects Added. Amend RSA 507:15 to read as follows:

507:15 Penalties for Frivolous Actions. If, upon the hearing of any contract or tort action, ***or any action against the state pertaining to a state construction project,*** it clearly appears to the court that the action or any defense is frivolous or intended to harass or intimidate the prevailing party, then the court, upon motion of the prevailing party or on its own motion, may order summary judgment against the party who brought such action or raised such defense, and award the amount of costs and attorneys' fees incurred by the prevailing party plus [~~$1,000~~] ***$10,000*** to be paid to the prevailing party, provided such costs and fees are reasonable. The trial judge shall also report such conduct to the supreme court committee on professional conduct.

Rep. E. Smith, Ches. 26
May 5, 2003
2003-1485h
06/09

Adopted Majority

Amendment to SB 169

Amend RSA 507:15-a, I as inserted by section 2 of the bill by replacing it with the following:

I. If, upon the hearing of any action against the state pertaining to a state construction project, which has commenced after the necessary state and federal approvals for construction have been issued, it appears to the court that the action is frivolous or intended to otherwise harass or intimidate the prevailing party, then the court, upon motion of a prevailing party or on its own motion, may order summary judgment or other relief against the party who brought such action, and award the amount of costs and attorneys' fees incurred by the prevailing party. Costs may include, up to 10 percent of the total construction cost estimate for the project, determined as of the date the final pre-construction permit is obtained.

2003-1485h

AMENDED ANALYSIS

In a suit brought concerning a state construction project, this bill allows the prevailing party to recover costs, attorneys' fees and damages that may include up to 10 percent of the construction costs of the project.

Speakers

SIGN UP SHEET

1:00

To Register Opinion If Not Speaking

Bill # SB169 Date April ~~23~~ 24, 2003

Committee Public Works + Highways

**** Please Print All Information ****

Name	Address	Phone	Representing	Pro	Con
REP. RALPH AKINS	LEBANON	448-2513	GRAFTON 18		✓
Rep. Barbara Hull Richardson			Cheshire 26		✓
Rep. H.C. Dickinson			Carroll #4	X	

Hearing Minutes

HOUSE COMMITTEE ON PUBLIC WORKS AND HIGHWAYS

PUBLIC HEARING ON SB 169

BILL TITLE: relative to frivolous actions against the state concerning state construction projects.

DATE: April 23, 2003

LOB ROOM: 201 **Time Public Hearing Called to Order:** 1:00

Time Adjourned: 4:30

(please circle if present)

Committee Members: Reps. E. Smith, Leber, Gleason, Moore, Graham, Holland, Rausch, Tahir, Keans, Gionet, Kenison, McConkey, O'Brien, Waterhouse, Cloutier, C. Bouchard, Benn, Norelli, Malloy and Vallone.

Bill Sponsors: Sens. Clegg, Morse; Reps. Dickinson, E. Smith, Letourneau, Packard

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Prime sponsor, Senator Clegg speaking in support of this legislation. This legislation is the result of lawsuits being filed after all the permits, state and federal, have already been obtained. The effect is to delay necessary projects and increase taxpayer costs. This bill only addresses frivolous lawsuits.

Rep. Sherman Packard, Co-Sponsor, spoke in support because he has seen projects delayed by frivolous lawsuits. This bill hopefully will help prevent unnecessary taxpayer expenses.

*** Rep. Mike Whalley, representing the Speaker** of the House, he is in **strong support** of this legislation. He discussed that the intent of this bill is to prevent unnecessary delay of state projects. He provided documentation to right to know laws and on the definition of frivolous.

Rep. Peter Allen, spoke in opposition to this legislation, he objects to the use of frivolous and what determines frivolous. He feels that what is important to some may not be to others; it's in the eye of the beholder. The decisions should be made on what is in the public's best interest.

Rep. Robert Letourneau, Co-Sponsor, spoke in support. He noted that the judge determines what is frivolous and will make that determination.

Rep. H.C. Dickinson, speaking in support of this bill. He views this as tort reform and he is in support of tort reform. The appropriate time for lawsuits is during the permitting process, not after the process is completed.

***David Gleneck, representing himself**, is in **opposition** to this bill. He feels that the public does not have sufficient opportunity to change projects in the permitting process. Written testimony provided.

***Richard Moore, representing the Audubon society of NH**. He is in **opposition** to this legislation. Written testimony provided.

***Geoffrey Jones, Stoddard Conservation Commission (SPNHF)spoke in opposition** to this bill and represented himself. Written testimony provided.

***Lisa Kerber, representing herself**, she spoke in **opposition** to the bill. Written testimony provided.

Robert E. King, speaking in opposition. People involved in citizen actions are not seeking any monetary gain. This legislation would cause serious potential economic loss for concerned citizens.

Tom Weldon, representing himself. He spoke in **opposition.**

***Tom Irwin, representing the Conservation Law Foundation**. He spoke in **opposition** to this legislation. Written testimony provided. He was also concerned that the DOT did not take a position on this bill. He stated this bill is unprecedented in creating problems for citizen's rights. Additionally he was concerned that it might violate state and federal constitutional law.

Gary Abbott, representing the **Associated General Contractors**, he spoke in **support** of this legislation. He stated it is important to know the process that is required to complete state construction projects. Frivolous lawsuits should not be a part of the process. Delay is a huge cost to the public.

Carolyn Jones, Keene, she represented herself and spoke in **opposition**. She spoke of her experience with the Keene bypass and the problems relating to the project. She felt this bill takes away citizens rights.

Claire Ebel, representing the **NHCLU,** she spoke in **opposition** and strongly suggested it was in violation of the state constitution. She objected to lines 9-12,in particular "frivolous or intended to harass or intimidate".

Catherine Corkery, representing the **NH Sierra Club**. She spoke in **opposition** to this legislation. There are already remedies in place to prevent frivolous lawsuits.

***David Buhlman** provided a written statement.
***John MacIntosh** provided a written statement
***Nancy Balla** provided a written statement
***Nathaniel Stout** provided a written statement

OPINION – NOT SPEAKING:
Rep. Ralph Akins, Grafton 18 – CON
Rep. Barbara Hull Richardson, Cheshire 26 - CON
Nancy Girard – CON (Signed pink card to speak but did not speak)
Marjory Swope, representing the NH Assoc. of Conservation Commissioners. She is in opposition to this bill but was not present to speak.

Respectfully submitted,

Rep. James B. Rausch, Clerk

Testimony

file copy
Received via Email and requested by Mr. Ryan to be part of SB169 record JBK 4-25-03

April 22, 2003

Honorable Members of the
House Public Works and Highways Committee
The House of Representatives of the State of New Hampshire

BY HAND; Hearing on SB 169.

Re: **SB 169, 2003 Session**

Dear Chairperson Smith and Honorable Members:

Please accept these written comments with regard the proposed bill identified above. Please be advised that while I share the general goal of seeing the judicial power of the State utilized in appropriate cases or controversies, I remain troubled by the bill as proposed. I note, as I think essential, the provision of our State Constitution that relates to the availability of courts to the citizens and thereafter I number some concerns and suggestions that I would respectfully ask you to consider:

[Art.] 14. [Legal Remedies to be Free, Complete, and Prompt.] Every subject of this state is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

1. I note that as a citizen I have appeared before the Senate Transportation Committee and have opposed the bill. I would urge members of the House, if possible, to review the Senate record in addition to the thorough review the House will provide. Please note that despite efforts at amending the bill by the Senate, I continue to view the bill as inappropriate for our State and as inconsistent with the general and venerable right of citizens to contest the actions of the Government. I note below some specific concerns.

"...without delay..."

2. I urge the members to exercise some caution in an area that may indeed operate to "chill" the rights of citizens—alone or guided by lawyers—in bringing actions that may impact construction projects. The proposed purpose of the bill is to accelerate construction according to the schedule of the Government without regard for the opinions of citizens. Those who govern are well aware that the power to govern comes form the consent of citizens. Proponents of the bill will claim it streamlines the process, while I contend it steamrolls the right of citizens to contest government actions as secured by the State Constitution.

3. The bill, as proposed, could be construed to require the court to sanction individuals who bring actions that operate to delay a project.
4. Construction projects very often involve the changed use of land and may well impact elements of the natural environment or human environment.
5. Very often people become concerned and motivated at a potential loss occasioned by a particular project. In some cases, this type concern will appear in Court by way of a temporary restraining order or preliminary injunction. The hope of those that bring the case is to gain a favorable ruling to delay the project long enough to protect some special area or community asset. Imagine, if you will, DRED receiving blasting permits near the Old Man in the Mountain. I am quite sure numerous citizens would rally to prohibit blasting near our most distinctive symbol of the State.
6. I realize my example is imaginative, but my hope is that it will cause members to think how they would react if such a proposal was afoot. Like me, I imagine everyone would want some official of the Government to assure us that the activity would not harm our scenic treasure. We would all probably be proud to clasp hands and urge a Court to delay the blasting until we were clearly assured that no damage would take place.
7. The bill, as proposed, would indeed "chill" the ability of all of us. Our noble intent would be to delay the blasting. The bill does not require that we be guilty of bad faith in seeking delay, it merely requires that if delay is sought, the Court can punish us by a sizeable financial bill.

Tension Among the Branches of Government

8. The bill before the committee touches an age-old debate that centers on the powers of the various branches of the Government.
9. We are well aware that the legislature may authorize and appropriate funds for a project and the Executive may expend energy and time in planning the project.
10. Yet, we are also aware that the smallest branch of our government—the judiciary--may influence the project in some small or profound way.
11. Even when a project enjoys unanimous appeal, we often see the legislature frustrated by the lethargy of the Executive in completing a directive.
12. I can quite understand the unique role the General Court plays in reaching consensus on a project only to see it delayed by any number of factors.
13. I appear today not as a member of a group, but simply as a citizen. I hope you will understand the distinction. You see--the Constitution that divided our government is truly a masterpiece of yielding power to citizens.
14. As a citizen, I can contact my legislator regarding a project. If he or she is at odds with my view, I can contact the Executive and the agencies of the Executive Department. Finally, the organization of our government—often as a final resort—allows me to seek a remedy from the judiciary.
15. There is, and for some time has been, a rather cool relationship between the legislature and the judiciary here in New Hampshire. I lament that condition, but also recognize it as part of the natural tension that exists between divisions of our government. I offer no easy solution to relations between parts of our

government, but do urge the members to be circumspect and cautious in creating laws that may tend to diminish the opportunities for citizens to complain of the conduct of the government.

The Senate Transportation Committee

16. When I searched on the Internet for a hearing on this bill I looked for it over in the Judiciary committee. I was and remain surprised that the matter has been referred to the Senate Transportation committee.
17. State Construction projects embrace activities in terms of the capital projects budget that are simply larger than projects relative to transportation.
18. Inasmuch as the proposed bill touches and concerns the Courts and is rooted in the Constitution, it would be my hope that any affirmative decision regarding the bill would also be referred to the House Judiciary committee prior to movement to the calendar of the full House.

"Costs shall include.... increased construction costs incurred by the State."

19. I would also urge members to apply common sense and common grammar to the concluding sentence of Section I of the proposed bill.
20. If the Court finds the case brought to cause delay and that costs should be awarded to the State, it **must** add to the financial award the burden of increased construction costs.
21. Increased costs in significant and costly State projects—and the risk of paying them—would significantly decrease the likelihood of citizen participation and in my opinion close the court house door not simply to actions some might think as frivolous, but also those that have merit.

A Suggested Alternative.

22. I offer the committee an alternative to the proposal and list it as follows:

RSA 507:15: Penalties for Frivolous Actions.

If, upon the hearing of any contract or tort action; **or any action against the state in the Superior Court pertaining to a state construction project**, it **clearly and convincingly** appears to the court that the action or any defense is frivolous **as defined by rules of the Superior Court**, then the court, upon motion of the prevailing party or on its own motion, may order summary judgment against the party who brought such action or raised such defense, and award the amount of costs and attorneys' fees incurred by the prevailing party. The Court may further provide for an award of $1,000 to be paid to the prevailing party, provided such costs and fees are reasonable. The trial judge shall also report such conduct to the Supreme Court committee on professional conduct.

23. While I realize it may well be bold and somewhat odd to appear and offer a suggested amendment, it is my hope it will inform your deliberations.
24. The simple amendments I would insert within RSA 507:15 would soften the financial hardship that could fall upon a well meaning citizen or chill the use of courts by citizens by **eliminating provisions** of the proposed bill that oblige the Court to assess as costs the **increase in spending** for the project.
25. The simple amendment eliminates the **overbroad** language regarding **delay.**
26. The amendment **is fair** in that both the State and other parties can be penalized for frivolous conduct, not simply parties other than the State.
27. Finally, it is my belief that the amendment keeps with the spirit of the proposal by offering significant **deterrents** to those who clearly and convincingly engage in **frivolity.**

I thank the Committee for the opportunity to be heard and to submit the following materials.

Very truly yours,

James Ryan
PO Box 137
Henniker, NH 03242

File copy

Nathaniel M. Stout
City Councilor, Ward 3
173 North Street
Keene, NH 03431

April 23, 2003

Members of the House Public Works & Highways Committee
Room 201, Legislative Office Building
Concord, NH 03301

Re: SB169 AN ACT relative to frivolous actions against the state concerning state construction projects.

Honorable Members of the NH House Committee:

Please find Senate Bill 169 "inexpedient to legislate."

Residents here in Keene don't have to look far to understand the repercussion of such a bill. As you know, the state bypass project here in Keene has been delayed by litigation disputing the state's transportation plans. The Conservation Law Foundation (CLF), in an action supported by many residents of this region, proved in Superior Court that the transportation plans for the bypass failed to properly mitigate the effects of road construction on our surrounding wetlands and vernal pools. Many of us here agree with these findings.

The findings of *Conservation Law Foundation v. N.H. Wetlands Council et al.* (No. 01-E-286), of course, are under appeal. I nonetheless believe that many of our region's citizens appreciate the foundation's efforts on our behalf and continue to support the CLF in its approach.

SB169, with it threats of impossibly harsh penalties for ill-defined "frivolous" lawsuits, would invariably suppress efforts such as those made by the CLF.

Keene needs improvements to its surrounding state highways, and we eagerly await favorable changes. We certainly desire an environmentally sensitive, economically sensible transportation system to enhance the region and the state and federal highway system. Yet, very few complaints have been expressed to me for the delay in construction of the 9-10-12-101 bypass. Conversely, I've heard many concerns for the preservation of our open spaces and conservation lands.

By its nature, SB169 harshly subjugates local concern to state authority. State agencies will be less accountable. The bill ultimately diminishes citizens' fundamental, constitutionally derived right to seek redress in the courts.

Thank you for your consideration.

Sincerely yours,

Nathaniel M. Stout

Nathaniel M. Stout

NEW HAMPSHIRE RIVERS COUNCIL

Feb copy

April 22, 2003

Representative Edwin O. Smith, Chairman
House Public Works & Highways Committee
Room 201, Legislative Office Building
Concord, NH 03301

Re: SB 169, An act relative to frivolous actions against the state concerning state construction projects.

Dear Chairman and members of the committee:

The New Hampshire Rivers Council opposes SB 169 and urges you to vote it inexpedient to legislate. The Rivers Council is the state's only organization wholly dedicated to the conservation of New Hampshire's rivers and watersheds.

We have grave concerns with SB 169, which pertains to so-called frivolous court actions concerning state construction projects. Although the goal of reducing frivolous lawsuits is laudable, we oppose SB 169 because it goes too far in discouraging a narrow subgroup of citizen lawsuits. This bill would severely undermine the ability of New Hampshire citizens to challenge agency actions, and confers unreasonable powers on the agencies.

This bill presents any and all citizens with potentially vast costs for initiating a court action against a state construction project. Under SB 169, not only will plaintiffs in a case be subject to the possibility of attorney and court costs, to which they are already subject under current law. They will also be liable for a wide – and poorly defined – range of costs associated with the project (such as construction delays, etc.). These costs are beyond the control of the individual as schedules for hearings are determined by the courts.

The possibility of such costs will serve to discourage legitimate actions against projects. Citizens and citizen groups simply can not risk the possibility of being saddled with such costs, regardless of the legitimacy of the complaint. Furthermore, with the term "frivolous" undefined in the bill (and with the Department of Transportation assumption that cases brought on any project that has been through a public participation process are "frivolous"), it appears that

54 Portsmouth Street • Concord, N.H. 03301
603-228-NHRC (6472) • Fax 603-228-0423

virtually any case brought on a DOT project would be subject to these costs. This seems to amount to a presumption of innocence for DOT.

The public processes in which agency projects must participate are merely a first step in the establishment of the legitimacy of a project. Agencies are currently forced to fully address public concerns raised through this process in part because of the possibility of lawsuits. In the vast majority of cases, this process is sufficient to resolve issues of concern without the need for lawsuits. In fact, there have been few such lawsuits to date – we are aware of only a few in the last few decades.

What's more, court challenges may well serve to reduce overall government spending by ensuring only legitimate projects proceed, and that they proceed with ALL costs carefully considered. It seems quite possible that the court challenge in the case of the I 93 project through Franconia Notch reduced the net costs to the state. If all costs and benefits are considered (including tourism benefits) the reduced project size is almost certainly more beneficial to the state than the original four lane proposal.

If the threat of lawsuits is essentially removed – which this bill will do – agencies will have little incentive to fairly address the concerns raised by its citizens. By simply conducting a public participation process, agencies would be able to insulate themselves from challenges to projects. This is a level of power that would seem never to have been intended for an agency.

The courts are the last resort for citizens who believe an agency action has been unwarranted. The right to intervene through the courts is a crucial part of the balance of powers so vital to the democratic process. This right, while it may result in delayed projects and headaches for agency staff, ensures that public projects are conducted fairly. Given the importance of the judicial role in public actions, we urge the commmittee to investigate the constitutionality of this bill.

Finally, we question why the bill has not been reviewed by the Senate and House Judiciary committees. This bill clearly has implications relevant to these committees, yet it has thus far not even been scheduled for hearings there.

We respectfully urge you to reject SB 169 as inexpedient to legislate.

Sincerely,

Carl Paulsen
Policy and Program Director

Fake copy



CONSERVATION LAW FOUNDATION

April 24, 2003

The Honorable Chairman Edwin O. Smith and Committee Members
House Public Works & Highways Committee
Room 201, Legislative Office Building
Concord, NH 03301

Re: SB 169, An act relative to frivolous actions against the state concerning state construction projects.

Dear Honorable Committee Members:

The Conservation Law Foundation (CLF) appreciates the opportunity to comment on Senate Bill 169. Founded in 1966, CLF is a member-supported, non-profit organization which works to solve the environmental problems that threaten communities in New Hampshire and throughout New England. CLF is a strong advocate for a balanced transportation system that is sensitive to the character and natural resources of New Hampshire's communities. For the following reasons, we urge this committee to deem SB 169 inexpedient to legislate. Alternatively, we urge the committee to submit this bill for review by the House Judiciary Committee.

SB 169 vests too much power in state agencies, at the expense of New Hampshire citizens and towns.

State public works projects can have tremendous impacts on the character of local communities, as well as on natural resources within those communities. Although in the best case scenario state agencies identify community and environmental-impact concerns early in the planning process, and fully address those concerns in their final designs, regrettably this does not always occur. Although the right of citizens and towns to access the courts is a matter of last resort, the ability to seek judicial review (***whether or not that right is actually exercised***) is critical to ensuring that state agencies comply with state laws. Regrettably, SB 169—by imposing massive potential liabilities on plaintiffs for undefined, so-called "frivolous" lawsuits—will create such an enormous financial risk for citizens and towns that it will effectively eliminate judicial review as a means of ensuring that state agencies comply with our state laws. In doing so, it will vest inordinate power in state agencies, making them less accountable to the legitimate concerns of the public.

27 North Main Street, Concord, New Hampshire 03301-4930 • Phone 603-225-3060 • Fax 603-225-3059 • www.clf.org

MAINE: 120 Tillson Avenue, Rockland, Maine 04841-3416 • Phone 207-594-8107 • Fax 207-596-7706
MASSACHUSETTS: 62 Summer Street, Boston, Massachusetts 02110-1016 • Phone 617-350-0990 • Fax 617-350-4030
RHODE ISLAND: 69 Washington Street, Providence, Rhode Island 02903-1726 • Phone 401-323-7608 • Fax 401-351-0118
VERMONT: 15 East State Street, Suite 4, Montpelier, Vermont 05602-3010 • Phone 802-223-5992 • Fax 802-223-0060

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Vesting such tremendous power in state agencies is exceedingly bad public policy because it is based on the assumption that state agencies can do no wrong.

By effectively shielding state agencies from judicial review, SB 169 is premised on the very faulty and dangerous assumption that state agencies are infallible. The bill's fiscal note, for example, states: *"The Department [of Transportation] assumes that for projects that have gone through a lengthy and rigorous approval and public participation process that are then subject to court challenges, such court challenges will be deemed frivolous."* (Emphasis added). DOT's assumption, which apparently is the basis of this bill, is severely flawed. It assumes not only that DOT *itself* can do no wrong, but that *other agencies* involved in the permit review process *also* can do no wrong. The inaccuracy of this assumption is best demonstrated by the permitting process for the so-called Keene bypass. There, following DOT's public participation process, DOT applied for, and received, a wetlands permit from the Department of Environmental Services. In doing so, however, both DOT *and* DES failed to discover and account for the presence of significant vernal pools almost directly in the footprint of the proposed project. DOT also failed to properly assess the feasibility of a project design which *numerous* citizens and officials from Keene and surrounding towns asked DOT to consider. Lacking any other alternative (*CLF specifically asked DOT to discuss the possibility of an out-of-court settlement, which request DOT ignored*), CLF sought judicial review of DOT's permit in superior court. Following a two-day hearing and substantial pleadings, the court agreed with CLF on nearly every issue raised, finding the permit unlawful. Rather than simply responding to the issues identified by the court and re-designing aspects of the project consistent with the desires of local citizens, DOT has appealed that decision to the Supreme Court, where it is currently pending.

As a general principal, and as demonstrated by the Keene bypass matter, state agencies—like any entity—can and do make mistakes. Accordingly, shielding state agencies through the punitive, severely chilling provisions of SB 169 simply makes no sense, and will ultimately lead to state projects that violate state law.

SB 169, if enacted, would greatly discourage New Hampshire citizens from actively participating in the planning processes for state construction processes.

The input of an engaged citizenry is one of New Hampshire's greatest assets. The Department of Transportation and other state agencies would most assuredly agree that they value the input of local citizens, and that such input often leads to improvements in the final outcome of a project. If, however, citizens and towns are effectively deprived of the ability to seek judicial review (*whether or not they actually exercise that ability*), they will be less likely to become involved in the public participation process. This, in turn, will result in projects that are less effective in achieving their goals, as well as projects that are less accepted by local communities.

SB 169 is likely unconstitutional.

New Hampshire's constitution ensures the right of its citizens to access the courts to seek legal redress. The New Hampshire and U.S. constitutions also provide critically important safeguards to protect the due process and free-speech rights of individuals. Because it severely chills the ability of individuals to seek access to the courts, it is likely that SB 169, if enacted, would be found to violate these constitutional rights.

The Committee should find SB 169 inexpedient to legislate or, alternatively, should request that the billbe submitted for review by the House Judiciary Committee.

For all of the above reasons, this Honorable Committee should conclude that SB 169 is inexpedient to legislate. Alternatively, should it reach a different conclusion, it should request that SB 169 also be heard by the House Judiciary Committee, so that it may lend its expertise to this bill which, despite significantly and directly affecting New Hampshire's court system, was never heard by the Senate Judiciary Committee.

Once again, CLF appreciates the opportunity to comment on SB 169.

Respectfully submitted,

Nancy L. Gikard, Esq.
Vice President, Director NH Advocacy Center
Conservation Law Foundation
27 North Main Street
Concord, NH 03301

Thomas F. Irwin, Esq.
Staff Attorney
Conservation Law Foundation
27 North Main Street
Concord, NH 03301

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File copy

April 24, 2003

To the Members of the House Public Works & Highways Committee:

Thank you, Mr. Chairman and Committee Members, for the opportunity to speak here today **in opposition to SB 169.**

The reason I drove 60 miles to be here is because I feel it's **important to do everything possible** to defeat this proposed legislation. The reason I feel so strongly is that **SB 169 attempts to short circuit** the checks and balances of our democracy. **It assumes that NHDOT is always right**. We all know that no institution is always right.

If it passed, this proposed law could easily lead to abuse of power... wasted money...and unnecessary sprawl.

As a member of the group that studied the Keene Bypass, I know our challenge to NHDOT **was not meant to stop or delay** this project. It was to find a more cost effective, appropriately scaled design. And we did that!

We talked to engineering experts who showed us how to solve our traffic problems with more efficient intersections. The savings in construction costs are estimated to be **$25 million or more**.

We found these designs could eliminate all the traffic lights at **five** major intersections...save drivers **thousands** of hours and **tons** of fuel each year... reduce the number and severity of accidents...and **be built years sooner.**

All these advantages would be lost if we were intimidated by NHDOT. If SB 169 becomes law, it would essentially let NHDOT do whatever they want. That could lead to the waste of millions of dollars, like in Keene.

As legislators, you of all people, should **embrace the principles of a democratic society**...the exchange of ideas...the healthy debate...and, yes, even the ability to challenge the mistakes of bureaucracies, when necessary. **That's what our Constitution was set up to do.** And now, today, right here in New Hampshire, it seems some people want to limit our rights of free speech.

Please don't pass this bill. **It's against everything America stands for.**
New Hampshire shouldn't be the one and only state in the country that **fears and discourages public participation.** We need to cherish and preserve our freedoms, starting right here in the state with the motto: live free or die.

Sincerely,

Lisa Kerber

file copy

4/23/03

Honorable Chairman Smith
Committee Members

Re: HB 169

I am submitting a brief letter in opposition to HB 169, as I am unable to attend the hearing.

It is my belief that both the Troy and Keene Bypass Projects serve as excellent reasons why this bill should not be passed. These projects both have shown that environmental/biological/geological experts from the public and private sector have strongly opposed parts of projects that the State D.O.T personnel did not consider to be very significant in their findings. It is important to recognize that the State D.O.T. may not always have the depth of expertise that others do who may wish to contribute and be heard on such high impact projects.
It is the intent of the Federal Highway Commission that the proper outlined procedures be followed on any projects receiving Federal tax dollars. This procedure includes room for input of new findings as well as appeals of decisions.
It is ironic to note that it was the State of NH DOT who after being denied their permits in the case of the Troy Bypass, exercised **their** right to appeal the decision. *It was their own appeal process which resulted in.delays.*
It is important to remember that not only the State has the right to appeal. It works both ways. Currently the granting of the new permit has been appealed --- as is the peoples' right in due process for building Federal Major Impact Highways.
The State is not the only one who has to deal with the delays. My property has literally been held hostage now for over 8 years waiting for the decision to be made on the Troy Project. Even though the State has not received all permits for the project, they have repeatedly entered my property and not only surveyed, but have also cut trees and drilled 5 wells across it. I am unable to sell it or build on it, while they do as they please. As the owner and taxpayer of that land, I believe that the State DOT has already abused it's power, and has become arrogant in doing what they want, with no regard for anything or anyone who is in their way. This House Bill rewards and encourages such abuse of power and denies due process. It is a breech of public trust and the democratic process.

It was approximately a year ago that Representative Smith sponsored a similar bill which would have allowed projects to begin before all permits were obtained.

That bill was defeated as should this one be.

I ask that you respect the process that is in place and concentrate your efforts on putting these project appeal hearings on a much faster track. From an appeal to a hearing should not take years. It should be as immediate as possible in fairness to all parties.
No one likes excessive delays, but they are far preferable to losing our rights!

Respectfully submitted,

Nancy Balla
Rt 12A
Surry, NH

Feb copy

Aprils 24th, 2003 House Public Works & Highways Committee
SB 169 Hearing
Frivolous Actions Concerning State Construction Projects

Mr. Chairman, members of the House Public Works & Highways Committee, I want to thank you for this opportunity to express my concerns regarding SB 169.

My Name is Geoffrey Jones.

I live in Stoddard N.H., where I am a professional forester and chairman of my town's conservation commission. I am also director of land management at the Society for the Protection of NH Forests. I am wearing several hats today.

First, I'm speaking on behalf of the Forest Society and my colleague, Charles Niebling, who regretfully could not be here today. He is off on a tour with Sen. Gregg's staff looking at some important land protection projects that conservation groups are seeking federal funding on. On behalf of the Forest Society, I would like to submit written testimony that opposes SB 169 as amended by the Senate, but offers language for an amendment to an existing law, regarding penalties for frivolous action.

Second, I would like to offer some personal comments based on my own experiences and observations.

Nature offered me a break in the annual Christmas tree planting operation in the form of a 3" snowstorm.....so I come here in the spirit of Christmas....

Driving down through Franconia Notch, I was reminded that the 2-lane interstate highway I was driving on is a classic example of how citizens involvement can help shape state construction projects for the better. As you know, several decades ago, the Department of Transportation proposed a 4-lane segment through Franconia Notch.

As a result of the resolve and determination from a number of individuals working in conjunction with several conservation groups, the DOT re-configured it's 4-lane design to the current 2-lane segment.....the only two lane section of interstate highway in the nation.

It is my understanding that the purpose of SB 169 is to allow state construction projects to proceed without delay. Anyone who challenges a state construction project that has the necessary state and federal permits will have to pay all legal and delayed constructions costs if the court deems such actions to be frivolous or intended to harass or intimidate the prevailing party.

While this may sound fair enough, what happens if an agency like the Wetlands Bureau issues a permit that's unreasonable or unlawful, or the Wetlands Council doesn't provide adequate independent review of the Wetlands Bureau, as Merrimack County Superior Court ruled? Who would challenge it?

After listening to the sponsors of SB 169 testify before the Senate Transportation Committee, last Feb. 19th, it became quite clear that the origins of this bill are rooted in the Keene bypass controversy.

I find the linkage of this bill with the Keene bypass to be very troubling, because for the past four years, I have been involved on the front lines of the Keene bypass expansion proposal, as a founding member of the Concerned Cheshire Citizens. Like the effort that took place in Franconia Notch, the CCC is seeking design alternatives to the Keene bypass that would be more in character with the city of Keene, have less of an environmental impact on wetlands and open space, and at a considerable savings to the taxpayers.

I personally got involved in the project for one reason: To defend the integrity of the wetlands permitting process. Let me explain:

In March of 2000, the NHDES issued a wetlands permit to the state Department of Transportation for the Keene bypass expansion project. Many in the environmental community believed that the proposed bypass design did not demonstrate how it was "less impacting than other design possibilities," known as LEDPA.

Some of us believed that the issuance of the wetlands permit, by the Wetlands Bureau was not done in accordance with LEDPA criteria and therefore represented a breach of public trust in the permitting process. This concern formed the basis for a series of appeals conducted by the Conservation Law Foundation.

The first appeal was before the Wetlands Bureau, which upheld its original ruling. The second appeal was before the Wetlands Council, an independent review board, which also upheld the Wetlands Bureau's ruling.

The third appeal was before the Merrimack County Superior Court, which agreed with the salient points argued by the CLF and vacated the wetlands permit. The courts concern centered on the following steps not taken during the wetlands permitting process:

- The DOT proposal did not meet state and federal wetlands criteria for LEDPA (a project must demonstrate that it is the least environmentally damaging practicable alternative).
- Roundabouts, as design alternatives that could have met the LEDPA criteria and highway engineering requirements, were not fairly or adequately explored.

One of the most incredulous findings centered on this statement by the Wetlands Council:

> *Wetlands Council Statement: " its* ***not the role*** *of the Wetlands Council to determine the truth of information, only to determine whether or not there was enough information provided to the record for DES to make a determination".*
>
> *The Court determined that: "Wetlands Council must determine whether the DES's decision was unlawful or unreasonable. To do so, it must consider whether submitted* ***facts are credible and not accept them unconditionally****"*

- In other words, the Wetlands Council, an independent state-review board, rubber stamped the Keene bypass project, rather than providing critical review of the Wetlands Bureau's issuance of the DOT wetlands permit.

It's important to recognize that the organized effort to challenge the Keene bypass began **after** all the permits were in place.

The state Supreme Court is scheduled to begin hearing the DOT's appeal on May 7.

Maybe the sponsors of SB 169 consider this activity frivolous. I certainly don't', nor does anyone else associated with this effort. Neither do the courts.

Was the Keene bypass project delayed?

Yes it was. However, those responsible for the delay were not using the extra time to harass or intimidate the prevailing party. We were educating, informing, and enlightening the city of Keene:

- As a result of our efforts, the Keene city council voted to reverse its previous position in favor of a *unanimous* decision to seek design alternatives.
- We obtained the support from 80 business leaders and more than 5,000 petition signatures requesting a less environmentally damaging design alternative.

- Our efforts resulted in presentations by national and international highway engineers who offered constructive and cost-effective design alternatives.
- We obtained the support of 11 Conservation Commissions in Cheshire County and the New Hampshire Association of Conservation Commissions.

As a result of this public process, a citizens group has been able to educate a community, enlighten a proud public agency and enter into a constructive dialogue, whereby community leaders and state officials are seriously entertaining design alternatives that should leave a much smaller footprint on wetlands, protect open space values and save the taxpayers anywhere from $20 to $35 million on a $66 million dollar project.

Again, it's important to note that all of this effort took place after the DOT had all their permits in place.

Hard-working citizens in this effort include nurse practitioners, college professors, teachers, building contractors, professional engineers, farmers, house painters, and natural resource professionals. These people are not the type to engage in frivolous activities.

While I can appreciate the sponsors concerns regarding individuals who challenge state construction projects with the sole intent to harass and delay them, I can vouch from first-hand experience, that the current system is designed to discourage and eliminate all but the most seasoned and legitimate concerns.

I know from first-hand experience that to critically question public construction projects requires stamina, perseverance, and dogged determination, not frivolity.

If SB 169, in its current form, had been in effect, none of this citizen's effort would have taken place! The risk of being judged frivolous will stop legitimate opposition groups from mounting challenges in the future. The Keene bypass would be in its third year of construction, having survived a gravely flawed process.

Remember my original question: what happens if an agency like the Wetlands Bureau issues a permit that's unreasonable or unlawful? Who would challenge it?

According to former Keene mayor, Pat Russell, an informed and motivated public has always been the best system of checks and balances. It's this public participation that distinguishes our country from the Iraqs and North Koreas of the world.

Mr. Chairman, in closing, I would like to offer the compelling comment: Over the past four weeks, the world has just witnessed an incredible liberation of Iraq by the armed

forces of this country. A nation of people who have not experienced democracy for over 25 years are about to have that opportunity.

Meanwhile, the citizens of NH are about to have a very important public process taken away from them. As a Vietnam veteran, I can only characterize this effort as an act of domestic political terrorism that should not be tolerated.

One of the questions I have asked my self relative to the liberation of Iraq and my involvement in the Keene bypass controversy is this: what would motivate me to go off to war and fight for this country?

It would be to defend the public process that enabled me as an individual and as a member of an organized effort, to not only questioned and challenge a public construction project, but to help identify a positive and practical solution to the proposed project.

I would go off to war to defend the public process that resulted in the court ruling rendered by Judge McGuire in the Merrimack County Superior Court.

If we want to reap the benefits of "daily democracy, we have to have daily participation". We need to do everything we can to encourage public participation, not discourage or deny public involvement.

Good public projects should be able to withstand tough public scrutiny and not be protected by back door politics.

If SB 169 becomes a law, it will have a chilling effect on the public's ability to question, challenge or get involved in public construction projects.

For all of the above reasons, I respectfully request that you and your Committee reject SB 169 as inexpedient to legislate.

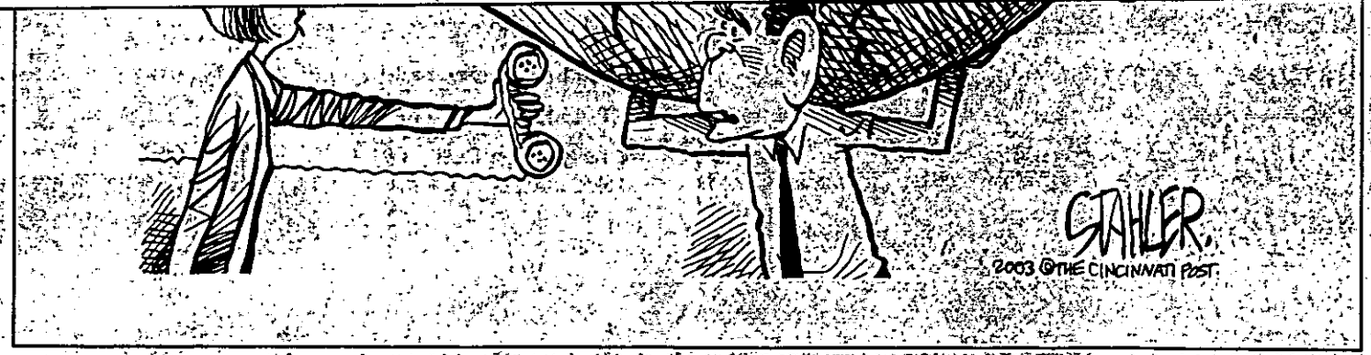
Thank you for your time and attention.

Respectfully Submitted,

Geoffrey T. Jones
Professional Forester and Chair of Stoddard Conservation Commission
Stoddard, N.H.

which other states were more interested in picking presidents in smoke-filled rooms than through participatory democracy. When New Hampshire took the lead, and in 1952 took the national center stage, it was not because this state sought the limelight, but because this state had always taken its politics seriously.

So, while a rotating primary system merits consideration, if any one primary state is to lead the voting process year after year, New Hampshire has earned the right. Besides, it's fun.



4/19/03
Keene Sentinel

The Keene bypass controversy spawns a dangerous bill

By GEOFFREY T. JONES

Robert Clegg, state senator from Hudson, has introduced Senate Bill 169, a seriously flawed and dangerous bill, otherwise known as the "frivolous lawsuits" bill. The purpose of the bill is to allow state construction projects to proceed without delay. Anyone who challenges such a project that has the necessary state and federal permits will have to pay all legal and delayed constructions costs if the court deems such actions to be frivolous.

While this may sound fair enough, what happens if an agency like the Wetlands Bureau issues a permit that's unreasonable or unlawful, as Merrimack County Superior Court ruled? Who would challenge it?

At the Feb. 19 hearing before the Senate Transportation Committee, Clegg offered this justification for his bill:

"Every state road project in the state is being held up by some environmental group .... You have a small group of obstructionist that are against laying any more tar."

In reference to the Keene bypass, he said: "Some judge thought roundabouts are good. What judge understands roundabouts?"

Clearly, the origins of this bill are rooted in the Keene bypass controversy. Frustrated by the effective challenge presented by Concerned Cheshire Citizens and the Conservation Law Foundation, the N.H. Department of Transportation has sought help from its legislative cohorts in an effort to circumvent the public process.

The undemocratic nature of this bill is underscored by the fact that it was reviewed by the Senate Transportation Committee, rather than by the Senate Judiciary Committee, which normally oversees bills that govern judicial due process. Having passed the Senate committee, this assault on the public's right and ability to comment on public-works projects will continue before the House Public Works and Highways Committee (not the House Judiciary Committee).

For the past four years, I have been involved on the front lines of the Keene bypass issue, along with many dedicated members of Concerned Cheshire Citizens. I am deeply disturbed by every aspect of this bill, because it will slam the door shut on an important public process. I know from firsthand experience that to critically question public construction projects requires stamina, perseverance and dogged determination, not frivolity. I can't imagine anyone in their right minds electing to go through this trying process unless they had real, legitimate concerns.

Missing from Clegg's concerns are the positive and powerful lessons that have been learned as a result of the CCC's and the Conservation Law Foundation's effort to not just challenge but to change the direction of the Keene highway project, a project that was all but a done deal.

It takes a well organized and concerted effort to get the Keene City Council to reverse its previous position in favor of a *unanimous* decision to seek design alternatives.

A challenge to an approved project has to be practical and make good business sense in order to get 80 business leaders and over 5,000 petition signatures requesting a less environmentally damaging design alternative.

After hundreds of letters to the editor and over 50 front-page articles on the Keene bypass, one has to have a compelling, well-founded argument to get a seasoned newspaper editor to agree to an 800 word op-ed piece on the bypass.

Frivolous motives do not attract the involvement of national and international highway engineers who offered constructive and cost-effective design alternatives.

Only a rational and well-thought-out argument for natural resource protection will win the support of 11 conservation commissions in Cheshire County and the N.H. Association of Conservation Commissions.

A challenge to a public construction project does not result in a favorable ruling from the N.H. Superior Court, unless it is based on solid legal logic. The Merrimack County Superior Court decided in favor of a better bypass design and against the Transportation Department in April of 2001. (The Supreme Court is scheduled to begin hearing the department's appeal on May 7.)

Hard-working citizens in this effort include nurse practitioners, college professors, building contractors, professional engineers, farmers, house painters, and natural-resource professionals. These people are not the type to engage in frivolous activities.

As a result of this public process, a citizens group has been able to educate a community, enlighten a proud public agency and enter into a constructive dialogue, whereby community leaders and state officials are seriously entertaining design alternatives that should leave a much smaller footprint on wetlands, protect open-space values and save the taxpayers anywhere from $20 million to $35 million on a $66 million-dollar project.

If SB 169 had been in effect, none of this citizens effort would have taken place! An informed and motivated public has always been the best system of checks and balances that help ensure that public agencies and officials follow existing rules and regulations and make wise land-use and public-spending decisions. It's this public participation that distinguishes our country from the Iraqs and North Koreas of the world.

The House Public Works and Highways Committee is scheduled to hear SB 169 on April 24 at 1:00 in Room 201 of the Legislative Office Building. Rep. Edwin "Smoky" Smith, a Hinsdale Republican, is both chair of the House Public Works and Highways Committee and a co-sponsor of this bill.

Good public projects should be able to withstand tough public scrutiny. If SB 169 becomes a law, it will have a chilling effect on the public's ability to question, challenge or get involved in public construction projects. Contact Smith and tell him to scuttle this dangerous piece of legislation. Better yet, attend the hearing and let your voice be heard!

Geoffrey T. Jones, of Stoddard, is a founding member of the Concerned Cheshire Citizens.

Other Opinion

The final evaluation of this war will depend on how Iraq is eventually transformed, and by whom

The war in Iraq will en- has been driven by our belief even as the fighting in the war transform this ethnic and reli- these complicated problems terms of the general interest

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Celebrating 100 YEARS

SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS

54 Portsmouth Street
Concord, NH
03301-5400
Phone: 603/224-9945
Fax: 603/228-0423
info@spnhf.org
www.spnhf.org

April 24, 2003

The Honorable Edwin Smith
Chair, House Committee on Public Works
201 Legislative Office Building
Concord, NH 03301

Re: SB169

Mr. Chairman and Members of the House Public Works Committee.

On behalf of the 10,000 members of the Society for the Protection of New Hampshire Forests, we submit this testimony today in opposition to Senate Bill 169, as amended by the Senate.

The Forest Society has a 102-year history of balanced advocacy in support of conservation and sound environmental policy. During this time, we have resorted to legal action involving major public works projects on only four occasions: the licensing of the Pontook Dam on the Androscoggin River, which we settled by gaining important mitigation requirements; efforts to halt a four-lane Interstate through Franconia Notch, which we won, and which led to the much-celebrated Parkway; the standard of environmental review around the siting of the Seabrook Nuclear Power plant, which we won; and the construction of the cellular telecommunications tower on Mt. Kearsarge, which we lost, but which led to more detailed procedures for siting telecommunications facilities on state mountaintops.

In each case, had the provisions of SB169 been in place, the Forest Society could not have assumed the risk and potential expense of filing suit to address concerns we had over the projects. SB169 will have a chilling effect even on meritorious actions brought by plaintiffs seeking by good intention to strengthen a decision to move ahead with important public works projects.

We do not engage in frivolous actions, and any frivolous action involving state construction projects should be discouraged as a matter of public policy.

In order to effect this policy, and as an alternative to SB169 as amended, which we believe goes too far, we offer a suggested amendment to RSA 507:15 - Penalties for Frivolous Actions, to read as follows:

> **507:15 Penalties for Frivolous Actions.** – If, upon the hearing of any contract or tort action, ***or any action against the state pertaining to a state construction project***, it clearly appears to the court that the action or any defense is frivolous or intended to harass or intimidate the prevailing party, then the court, upon motion of the prevailing party or on its own motion, may order summary judgment against the party who brought such action or raised such defense, and award the amount of costs and attorneys' fees incurred by the prevailing party plus $1,000 to be paid to the prevailing party, provided such costs and fees are reasonable. The trial judge shall also report such conduct to the supreme court committee on professional conduct.

We believe this approach substantially accomplishes the sponsor's intent, without unreasonably discouraging citizens from seeking legal recourse.

Thank you for the opportunity to present this written testimony. I apologize that I was not able to attend today's hearing.

Sincerely,

Charles R. Niebling
Senior Director, Policy and Land Management

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AUDUBON SOCIETY
OF NEW HAMPSHIRE

STATEWIDE OFFICES

3 Silk Farm Road Concord, N.H. 03301
PHONE 603-224-9909
FAX 603-226-0902
asnh@nhaudubon.org
www.nhaudubon.org

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PHONE 603-744-3516
FAX 603-744-1090

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888 White Oaks Road
Laconia, N.H. 03246
PHONE 603-366-5695
FAX 603-366-5720

SILK FARM
AUDUBON CENTER
3 Silk Farm Road
Concord, N.H. 03301
PHONE 603-224-9909
FAX 603-226-0902

April 24, 2003

The Honorable Edwin O. Smith, Chairman and
Members of the House Public Works & Highways Committee
Room 201, Legislative Office Building
Concord, NH 03301

Re: SB 169, An act relative to frivolous actions against the state concerning state construction projects.

The Audubon Society of New Hampshire opposes SB 169 as it is written.

The Audubon Society of New Hampshire does not engage in litigation. We are committed to collaborative problem solving among willing partners. We are primarily a research and education organization. Over time our research has provided important factual data to help inform good policy decisions. Recently, for example, our research on loons in New Hampshire has supported legislation to ban the use of lead sinkers and to pass the New Hampshire Clean Power Act. With our data on eagles in the Merrimack River we worked with the Department of Transportation on the siting of the Manchester Airport Access Road and have continued to be involved with discussions about the expansion of I-93.

However, we value our system of checks and balances and the role of the courts as a final recourse when differences must be mediated or when public process has been short-circuited. We do provide our data to both state agencies and private organizations that may ultimately use the data in litigation.

We are concerned that SB 169 would effectively remove that last recourse. Even when issues do not go to court, the possibility of litigation promotes the most careful consideration of options, opinions, and public feedback.

We urge the committee to reject SB 169 as inexpedient to legislate.

Sincerely,

Richard W. Moore
President

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Audubon Society of New Hampshire
Conservation Law Foundation
N.H. Public Interest Research Group
Society for the Protection of New Hampshire Forests

April 22, 2003

The Honorable Edwin O. Smith, Chairman and
Members of the House Public Works & Highways Committee
Room 201, Legislative Office Building
Concord, NH 03301

Re: SB 169, An act relative to frivolous actions against the state concerning state construction projects.

Dear Honorable Committee Members:

We are writing to express our concerns with SB 169, which pertains to so-called frivolous court actions concerning state construction projects. Although we agree that it makes sense to discourage baseless lawsuits—no matter what the subject matter—we strongly oppose SB 169 on the grounds that it simply goes too far and will severely undermine the ability of New Hampshire citizens to access the courts for even the most legitimate reasons. For the reasons that follow, we urge you and your committee to deem this bill inexpedient to legislate.

SB 169—What It Seeks To Accomplish:

The stated purpose of SB 169 is to allow state construction projects "to proceed without delay" and to limit legal actions that "unnecessarily delay state construction projects." The bill proposes to achieve this purpose by imposing new and unprecedented potential liabilities on individuals who access the courts with concerns pertaining to state construction projects. More specifically, the bill proposes that a person challenging a state construction project in court can, if that court action is deemed "frivolous or intended to otherwise harass or intimidate," be liable not only for the customary attorney fees and costs incurred in the defense of the lawsuit (which fees and costs can themselves be substantial), but *also* for "increased construction costs incurred by the state." Although the bill fails to in any way define what constitutes a "frivolous" action, according to the Department of Transportation's analysis set forth in the Fiscal Note, any court action challenging a project that has gone through a public participation process and obtained its permits "will be deemed frivolous or harassing in nature."

Why We Oppose SB 169:

As history has shown, the active participation of concerned New Hampshire citizens can shape state construction projects for the better. Several decades ago, for example, the Department of Transportation proposed a 4-lane segment of Interstate 93 through one of our state's most unique and emblematic natural resources—Franconia Notch. As a result of the resolve and determination of a number of environmental organizations, DOT ultimately re-configured its original design to the 2-lane segment we have today (the only 2-lane segment of interstate highway in the nation), greatly preserving the character and beauty of the Notch. Given that state construction projects can have enormous impacts on the character and natural resources of our state, it is critical that concerned New Hampshire citizens remain empowered to raise legitimate concerns, even if doing so means seeking judicial review. SB 169, however, threatens to greatly erode the ability of New Hampshire citizens to make a difference, and to hold their state agencies accountable, for the following reasons:

- The enormous potential liability for individuals challenging a state construction project (specifically, a plaintiff's potential liability for increased construction costs), will severely chill even the most meritorious actions. Simply put, few people, if any, would endure the significant financial risks created by this bill, no matter how legitimate their action might be. The financial risks would simply be too high.

- By chilling the ability of New Hampshire citizens to access the courts, SB 169 also will severely undermine the willingness of the public to participate in any public processes mandated by state or federal law. Specifically, by effectively eliminating the likelihood of state court challenges, SB 169 will create the perception that state agencies can ignore the comments and concerns of the public with impunity. This, in turn, will threaten the effectiveness of one of New Hampshire's most important resources—the active participation and input of an engaged citizenry.

- By effectively eliminating the ability of citizens to access the courts to raise concerns with state construction projects, SB 169 vests an inordinate amount of power in our state agencies. By shielding state agencies at the expense of citizens' ordinary ability to seek judicial review, SB 169 is premised on the very flawed assumption that the government can do no wrong.

Questions To Ask Of The Bill's Sponsor:

In addition to the very significant concerns discussed above, SB 169, and the manner in which it has proceeded through the General Court, warrants answers to some important questions. Specifically, we believe it is critical for the Public Works and Highways Committee to ask the following questions of SB 169's sponsor:

- Would the significant potential liabilities imposed by SB 169, and the chilling effect they will have on the ability of citizens to access the courts, violate the constitutional

right of individuals to seek a remedy by recourse to the law, as well as the right to obtain justice freely and completely? *See* NH Constitution Part I, Art. 14th. Would SB 169 violate the U.S. Constitution?

- Is it possible that the additional scrutiny afforded by judicial review could result in a *decrease* in the cost of a state construction project, thereby saving taxpayers' dollars?

- What is the Department of Transportation's position on this bill, and how did it arrive at its conclusion that any court action challenging a project which has gone through a public participation process and received its approvals "will be deemed frivolous or harassing in nature"?

- Is there any reason that SB 169 should not be presented to the House Judiciary Committee, particularly when it pertains to judicial matters and was not reviewed by the Senate Judiciary Committee?

- What constitutes a "frivolous" action?

- Would the provisions of SB 169 apply to a municipality that has concerns with a state construction project and which seeks legal recourse?

Conclusion:

For all of the above reasons, we respectfully urge you and your Committee to reject SB 169 as inexpedient to legislate. Alternatively, we urge you to amend SB 169 to eliminate those provisions making litigants potentially liable for increased construction costs, and to define the term "frivolous" in detail and in a manner that preserves the right of New Hampshire citizens to obtain judicial review when there is a good faith basis for believing that state laws have been violated.

Respectfully Submitted,

Richard W. Moore, President
Audubon Society of New Hampshire
3 Silk Farm Road
Concord, NH 03301

Josh Irwin, Director
N.H. Public Interest Research Group
80 ½ North Main Street, Suite 204
Concord, NH 03301

Nancy L. Girard
Vice President, N.H. Advocacy Center Director
Conservation Law Foundation
27 North Main Street
Concord, NH 03301

Jane Difley, President/Forester
Society for the Protection of NH Forests
54 Portsmouth Street
Concord, NH 03301-5400

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JOHN D. MACINTOSH, P.C.
ATTORNEY AT LAW
24 MONTGOMERY STREET
CONCORD, NEW HAMPSHIRE 03301

TELEPHONE 603-225-1188
TELECOPIER 603-224-3055

April 24, 2003

HAND DELIVERED

Representative Edwin O. Smith, Chairman
House Public Works & Highways Committee
Legislative Office Building
Room 201
Concord, NH 03301

Re: SB 169

Dear Chairman Smith and Members of the Public Works and Highways Committee:

I am writing on behalf of the New Hampshire Bar Association (NHBA) with regard to SB 169, an act relative to frivolous actions against the State concerning state construction projects.

The NHBA understands that the bill has been amended by the Senate and will be heard by your committee on Thursday, April 24.

Of concern to the Bar is the term "costs", which in the case of this bill, includes "increased construction costs incurred by the State." At first blush, this would not appear to be a "cost", but rather, actually an additional measure of damages. To that end, this bill is substantially different than the current law which governs "frivolous actions".

Because this bill involves matters concerning access to the courts, definition of damages and costs, the Bar would recommend that it be referred to the House Judiciary Committee which regularly deals with these types bills.

If you have any further questions about the Bar's

concerns with regard to this legislation, or if we can be of any additional assistance, do not hesitate to call on us.

Sincerely,

John D. MacIntosh, Esq.
Legislative Representative for the
New Hampshire Bar Association

JM/kap

cc: Jeannine McCoy, NHBA

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TO: The Honorable Chairman Edwin O. Smith and Honorable Members of the Public Works and Highways Committee

FROM: David L. Buhlman, P.E., Representative, District 66, Hudson-Pelham DLB

RE: SB 169 - Relative to Frivolous Law Suits Against the State

DATE: April 23, 2003

With regrets that I am unable to appear before this committee to deliver testimony in person in support of this vitally needed legislation, please accept this written testimony.

As a registered professional civil engineer in New Hampshire and two other states, who has over 35 years of experience in designing highways and roadways, I know that SB 169 is needed to prevent law suits that are intended to delay the construction of vital transportation improvement projects. I have personally observed this on several projects. The other observation I have made is that the NHDOT, and other state transportation agencies, know what they are doing; they know how to design and construct transportation improvement projects that improve traffic flow and safety, while respecting the needs of the area residents and the natural environment .

Since the 1970 passage of the federal National Environmental Policy Act, the number of environmental laws and regulations and, with them, the field of environmental law has grown steadily. With this growth, the cost of the design and construction of transportation improvement projects has increased significantly. When projects are delayed, either by lawsuits or the threat of law suits, all of those involved in the process benefit - the lawyers, the consulting engineering firms, and the environmental consulting firms - by the associated delays and redesigns. On the other hand, the people who suffer from these delays are the taxpayers and those who need the transportation improvements to more efficiently deliver goods or to commute to work without having to engage in a driving marathon. Their legitimate human needs are virtually ignored in the process in favor of studying and re-studying supposed environmental impacts on such things as vernal pools. The taxpayers and drivers are relegated to waste their time in traffic jams that would have been eliminated much sooner without the delays caused by law suits.

In a variation of the old dictum, those who have become expert in environmental law and associated delaying tactics seem to be saying to the rest of us: IT'S MY WAY OR NO HIGHWAY.

In the interest of fairness and justice, and for the good of the taxpayers and the motoring public, I respectfully urge you to vote OTP for this important legislation.

Thank you for considering my observations.

Relative to SB 169

David Gleneck
34 Tampa St, Nashua NH

Good afternoon members of the House Public Works and Highway Committee. I am here today to speak in opposition to Senate bill 169.

Do you know how hard it is for a person to fight a city, or a state road project? Restricting the public's ability to question a road project is not the way to solve a road project that has problems. When a person or a group questions a city's or a state's road project it is because they see problems in that project. Cooperation and public involvement is much more effective remedy than SB 169.

If a person or a group try to change the way a road project is configured, the city and the state uses your money to fight you and put all kinds of roadblocks in your path so you can not get the correct information or make your points known. When they do give you information that you legitimately request they take 6 to 9 months to get you a part of what you asked for. That is, if they even get you the information. If your request is for information they do not want you to have, then they just omit it from the information they do give to you. I speak from experience.

Some of you may remember me as a State Representative from Nashua in the last session. I had submitted a house bill to try to get a public hearing on a road project known as the Broad Street Parkway. This was a city run project administered by the state Department of Transportation and partially funded by the federal government. In the bill I only attempted to achieve two things, 1) obtain a public hearing on the project, and 2) that the citizens approve the project at the ballot before they could build and spend monies on the project. The problem I faced was that for years the city withheld critical information about the project from the citizens and refused

to look at serious problems in the design of the road project. This process of not working with the public and operating without public involvement made the citizens feel like the city (and the state) was trying to shove this project down the citizens throats, that was the term many citizens made.

Although my house bill was soundly defeated, my attempt yielded results in a way I had not anticipated. As a result of the defeat, the citizens of Nashua complained loudly to the city and the result was that the city formed a committee to look at the issue and finally agreed to hold a public hearing. This public hearing, held in Nashua on the Broad Street Parkway, had the highest attendance of any hearing ever held in the city of Nashua. 96% of the attendees stated that they opposed the project as it was presented at the public hearing. The public asked many direct and pointed questions. The city has never **answered even ONE** of the many questions that the public asked. They still have not answered any of the questions, to this date.

However when the city saw the level of public interest and opposition to the project as presented the process began to change. After some time and a change of some of the city personnel the city began to investigate some of the complaints. They hired several consultants to study the project and try to look at the issues brought up by the citizens. Surprisingly the consultants reported that the many complaints about the design of certain portions of the project were absolutely valid and the project as presented would not achieve the stated purpose and would have created more problems than it solved.

Subsequent to the consultants reports the city began to meet with citizens, groups, along with the consultants to analyze the problems. The new cooperation with the citizens has borne fruit. As of Tuesday and Wednesday of this week this cooperation has resulted in changes to the design of the project to correct the problems. The new corrected project plan is expected to save about 11 million dollars on a 50 million-dollar project. But more than anything it is expected to result in a better road project rather than a road project that would devastate neighborhoods and change the character of Nashua forever. Public involvement is essential.

Rather that working on a bill that would limit public comments and involvement in a project I feel that the opposite would be more productive and cost effective. That a bill that would require cities, and state to work with the public on all road projects by having public hearings early on in the process and every few months to get their input before a road project it undertaken would better results. In this way the public would work with, not against the state. Myself and other citizens have spent over 15 years of work trying to correct problems in the Broad Street Parkway without the cooperation from the city or state. With the cooperation of the city it has taken less than a year to solve the problems. Please kill this bill: **encourage public participation** on road projects instead of putting more obstacles in the publics' way.

File copy Right to Know Law

§ 91-A:8. Remedies.

I. If any body or agency or employee or member thereof, in violation of the provisions of this chapter, refuses to provide a public record or refuses access to a public proceeding to a person who reasonably requests the same, such body, agency, or person shall be liable for reasonable attorney's fees and costs incurred in a lawsuit under this chapter provided that the court finds that such lawsuit was necessary in order to make the information available or the proceeding open to the public. Fees shall not be awarded unless the court finds that the body, agency or person knew or should have known that the conduct engaged in was a violation of this chapter or where the parties, by agreement, provide that no such fees shall be paid. In any case where fees are awarded under this chapter, upon a finding that an officer, employee, or other official of a public body or agency has acted in bad faith in refusing to allow access to a public proceeding or to provide a public record, the court may award such fees personally against such officer, employee, or other official.

I-a. The court may award attorneys' fees to a board, agency or employee or member thereof, for having to defend against a person's lawsuit under the provisions of this chapter, when the court makes an affirmative finding that the lawsuit is in bad faith, frivolous, unjust, vexatious, wanton, or oppressive.

II. The court may invalidate an action of a public body or agency taken at a meeting held in violation of the provisions of this chapter, if the circumstances justify such invalidation.

III. In addition to any other relief awarded pursuant to this chapter, the court may issue an order to enjoin future violations of this chapter.

History

Source. 1973, 113:1. 1977, 540:6. 1986, 83:7, eff. Jan. 1, 1987. 2001, 289:3, eff. July 17, 2001.

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§ 147:16-a. Procedure for Ordering Building Vacated.

The health officer shall have the authority to order occupants to vacate a building, structure, or other premises if the officer determines, based on reasonable information and belief, that the condition of such premises constitutes a clear and imminent danger to the life or health of occupants or other persons, and that protection of life or health requires vacating the premises. For the purposes of this section, 'officer' shall mean any municipal official who orders such vacation, including the health officer acting under the authority of this section, RSA 147:4, or RSA 147:11, the building inspector acting under RSA 674:52-a, or the fire chief acting under RSA 154:21-a. The following procedure shall apply:

I. The officer shall inform the owner and all occupants of the premises of the order, orally or otherwise, as soon, and by such means, as are practicable. The order, if not effective immediately, shall include a reasonable time, in light of the seriousness and immediacy of the danger, within which vacation must occur.

II. A prominent notice shall be posted at each entrance to the building or other premises providing a brief description of the dangerous condition, and informing all persons that the premises has been ordered vacated, and of the officer making the order and the effective date and time of the order. Such notice shall not be removed during the period such order is in effect, and anyone removing such notice shall be guilty of a misdemeanor. The following wording, though not exclusive, shall be deemed sufficient:

'DANGER. THIS BUILDING (or other premises) IS UNSAFE BECAUSE OF THE FOLLOWING DANGEROUS CONDITION: (brief description) _____ EFFECTIVE (date and time). OCCUPANCY IS PROHIBITED BY ORDER OF THE (officer's title) OF THE TOWN (City) OF _____, UNDER AUTHORITY OF RSA 147:16-a. DETAILS OF THIS VIOLATION ARE ON FILE AT _____. ANYONE ENTERING THIS BUILDING (premises) WITHOUT PERMISSION OF THE (officer's title), OR ANYONE REMOVING THIS NOTICE SHALL BE GUILTY OF A MISDEMEANOR. PERSONS AGGRIEVED BY THIS ORDER MAY REQUEST A HEARING IN THE _____ DISTRICT COURT, AND MAY ASK THE COURT TO DIRECT THE RESPONSIBLE PARTY TO REMOVE OR ABATE THE DANGEROUS CONDITION.'

III. The officer shall cause written notice of the order to vacate to be sent, registered mail, to the owner of the property, if known, and to known lessees or others known to exercise control over the premises. Such written notice shall be mailed within 24 hours of the order to vacate, or upon the next business day thereafter, provided, however that no such mailing shall be necessary in cases where, due to immediate removal or abatement of the source of danger, the order has been countermanded before that time. In the alternative, the officer may cause the written notice to be served personally by a peace officer. The written notice shall contain the address and description of the premises, a statement of the particulars of the danger to life, health, or safety, a statement of the date and time that the order becomes or became effective, and a statement of the right to a hearing in district court to contest the order or to have the court consider whether to direct the responsible party to remove or abate the source of danger. The officer shall also forward a copy of the order to the local law enforcement agency having jurisdiction to enforce the order, and shall file a copy of the order, and a service list of the names and addresses of the people to whom the officer sent notice of the order, in the district court for the district in which the property is located. Any court filing fee shall be paid by the municipality.

IV. Any person specially aggrieved by the order to vacate may file a written request with the clerk of the district court for the district in which the property is located for a hearing to contest the order or to have the court consider whether to direct the responsible party to remove or abate the source of danger. The hearing shall be held no later than 7 days after the request is received

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by the clerk who shall send a hearing notice to the aggrieved person, the municipality, and any other person whose name appears on the service list filed in court by the municipality. The hearing shall concern whether the order to vacate is justified and/r whether the court shall order the responsible party to prospectively remove or abate the source of danger. Other issues, including any challenge to outstanding ordinance or code violations, cease and desist orders, or removal or repair orders, shall be contested only under the statutes appertaining to them. The court, upon presentation of such evidence as it may require, shall affirm, modify, or set aside the order to vacate, issue any such other appropriate order as is consistent with this paragraph, and enter judgment accordingly.

V. Any person who fails to comply with an order under this section, after having received due notice of it, either orally, in writing, or by posted notice, shall be guilty of a misdemeanor unless the district court has set aside the order. A deficiency in the municipal officer's adherence to this section shall not constitute a defense to the misdemeanor charge unless it amounts to failure of notice to the defendant.

VI. A municipality may combine any order to vacate under this section with other lawful orders, including but not limited to orders under RSA 147:7-a, RSA 154:20, RSA 155-B:2, or RSA 676:17-a, as long as the minimum procedures of this section are met. When and if the source of danger is removed or abated following the issuance of any order to vacate under this section or any order under paragraph IV or if the order to vacate is set aside by the district court, the displaced occupants shall have the right to return to occupancy in the building, structure, or other premises.

VII. The provisions of this section shall not apply to a residence which is occupied only by the owner and his or her immediate family, unless the condition of such premises constitutes a clear and imminent danger to the life or health of persons other than the occupant or occupants.

VIII. Nothing in this section shall be deemed to affect a municipality's duty to provide general assistance under RSA 165. No proceeding under this section shall be deemed to affect any legal rights between landlord and tenant.

IX. If the district court finds that a municipality's order to vacate under this section was frivolous, or was commenced in bad faith, or was not based upon reasonable information and belief, then the court may order the municipality to pay the costs and reasonable attorneys' fees of any aggrieved person requesting a hearing on the order to vacate under paragraph IV.

History

Source. 1998, 318:1, eff. Aug. 25, 1998.

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§ 205-A:19. Attorneys' Fees and Costs. RSA 205-A:19 effective January 1, 2003.

If the court finds that a tenant or a park owner has filed a frivolous petition for the purpose of harassing the other party, it shall assess the court costs and reasonable attorneys' fees against the petitioner.

History

Source. 1981, 481:4, eff. Aug. 28, 1981. 2002, 109:1, eff. Jan. 1, 2003.

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Human Rights Commissi

§ 354-A:21. Procedure on Complaints.

I. (a) Any person claiming to be aggrieved by an unlawful discriminatory practice may make, sign and file with the commission a verified complaint in writing which shall state the name and address of the person, employer, labor organization, employment agency or public accommodation alleged to have committed the unlawful discriminatory practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the commission. The attorney general or one of the commissioners may, in like manner, make, sign, and file such complaint.

(b) In connection with the filing of such complaint, the attorney general is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules. Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of this chapter, may file with the commission a verified complaint asking for assistance by conciliation or other remedial action.

II. (a) After the filing of any complaint, one of the commissioners designated by the chair shall make, with the assistance of the commission's staff, prompt investigation in connection therewith; during the course of the investigation, the commission shall encourage the parties to resolve their differences through settlement negotiations; and if such commissioner shall determine after such investigation that probable cause exists for crediting the allegations of the complaint, the commissioner shall immediately endeavor to eliminate the unlawful discriminatory practice complained of by conference, conciliation and persuasion. The members of the commission and its staff shall not disclose what has occurred in the course of such endeavors, provided that the commission may publish the facts in the case of any complaint which has been dismissed, and the terms of conciliation when the complaint has been so disposed of. When the investigating commissioner finds no probable cause to credit the allegations in the complaint, the complaint shall be dismissed, subject to a right of appeal to superior court. To prevail on appeal, the moving party shall establish that the commission decision is unlawful or unreasonable by a clear preponderance of the evidence. The findings of the investigating commissioner upon questions of fact shall be upheld as long as the record contains credible evidence to support them. If it reverses the finding of the investigating commissioner, the superior court shall remand the case for further proceedings in accordance with RSA 354-A:21, II, unless the complainant or respondent elects to proceed with a hearing in superior court pursuant to RSA 354-A:21-a.

(b) In case of failure to eliminate an unlawful discriminatory practice complained of, or in advance thereof, if, in the judgment of the commissioner 354-A:21 making the investigation, circumstances so warrant, the commissioner shall cause to be issued and served in the name of the commission, a written notice, together with a copy of such complaint, as the same may have been amended, requiring the person, employer, labor organization or employment agency named in such complaint, hereinafter referred to as respondent, to answer charges of such complaint at a hearing before 3 members of the commission, designated by the chair and sitting as the commission, at a time and place to be fixed by the chair and specified in such notice. The place of any such hearing shall be the office of the commission or such other place as may be designated by it.

(c) The case in support of the complaint may be presented before the commission by the complainant or complainant's representative and the commissioner who shall have previously made the investigation and caused the notice to be issued shall not participate in the hearing except as a witness, nor shall he participate in the subsequent deliberation of the commission in

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such case; and the aforesaid endeavors at conciliation shall not be received in evidence. The respondent shall file a written verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The commission or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer. The commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and transcribed at the request of any party. The cost of transcription shall be borne by the party requesting the transcript.

(d) If, upon all the evidence at the hearing, the commission shall find that a respondent has engaged in any unlawful discriminatory practice as defined in this chapter, the commission shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, restoration to membership in any respondent labor organization, or the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons, as in the judgment of the commission, will effectuate the purpose of this chapter and including a requirement for report of the manner of compliance. Such cease and desist orders for affirmative relief may be issued to operate prospectively. The commission may also order compensatory damages to be paid to the complainant by the respondent and, in order to vindicate the public interest, order the respondent to pay an administrative fine. The administrative fine shall be deposited in the general fund. The amount of the administrative fine shall not exceed:

(1) $10,000 if the respondent has not been adjudged to have committed any prior discriminatory practice in any administrative hearing or civil action.

(2) $25,000 if the respondent has been adjudged to have committed a prior discriminatory practice in any administrative hearing or civil action and the adjudication was made no more than 5 years prior to the date of filing the current charge.

(3) $50,000 if the respondent has been adjudged to have committed 2 or more discriminatory practices in any administrative hearings or civil actions and the adjudications were made during the 7-year period preceding the date of filing of the charge.

(e) When issuing an order awarding back pay, the commission shall calculate the back pay award by determining the amount the complainant would have earned but for the unlawful discriminatory practice. The commission shall subtract from that amount any unemployment compensation or interim earnings received by the complainant for the time period covered by the back pay award.

(f) If upon all the evidence the commission shall find that a respondent has not engaged in any such unlawful discriminatory practice, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent. A copy of its order shall be delivered in all cases to the attorney general, and such other public officers as the commission deems relevant or proper. The commission shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder. If the commission finds that the complaint is frivolous, unreasonable, or without foundation, then the commission, upon motion of the respondent or on its own motion, may award against the complainant the amount of costs and attorneys' fees incurred by the respondent, provided such costs and fees are reasonable.

III. Any complaint filed pursuant to this section by an aggrieved person must be filed within

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180 days after the alleged act of discrimination. Any complaint filed pursuant to this section by the attorney general or one of the commissioners must be so filed within 180 days after the alleged unlawful discriminatory practice.

IV. In administering this section, the commission shall be exempt from the provisions of RSA 541-A:29, II, but shall close each case or commence adjudicative proceedings on such case under RSA 354-A:21 within 24 months after the filing date of the complaint.

History

Source. 1992, 224:1-3. 1994, 251:3, eff. Jan. 1, 1996; 412:44, eff. Aug. 9, 1994. 2000, 277:3-5, eff. June 16, 2000.

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§ 356-C:10. Reimbursement of Owner's Costs.

If a tenant refuses to pay a permissible rent increase under RSA 356-C:6, I(a), or brings an action under RSA 356-C:9, I, on grounds found by a court in either case to be frivolous or solely for the purposes of harassment, the tenant shall be liable to the owner for any costs incurred by the owner in connection with any such proceedings, including reasonable attorney's fees.

History

Source. 1983, 398:1, eff. June 22, 1983.

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Unfair Collection Practices

§ 358-C:4. Remedies.

I. Any debt collector who violates the provisions of this chapter shall be liable in any court of competent jurisdiction to the debtor for one of the following, whichever is greater:

(a) in an action brought by and on behalf of an individual debtor only, the sum of $ 200 plus costs and reasonable attorney's fees for each violation, or

(b) for all damages proximately caused by the violation.

II. Notwithstanding the foregoing, a debt collector shall not be held liable in any action brought under this chapter for a violation if the debt collector shows by a preponderance of the evidence that:

(a) the violation was a result of a computation error in billing and within 15 days of notification or discovery of said error the debt collector notified the debtor of such error and corrected such error; or

(b) the violation was not intentional and resulted from a bona fide error or mistake notwithstanding the maintenance of procedures reasonably adapted to avoid any such error or mistake.

III. In any suit to collect a debt, the debtor may raise, by way of counterclaim, set-off or recoupment, a violation of this chapter, and upon proof of a violation by a preponderance of the evidence, the court shall award damages to the defendant pursuant to this section and shall set such damages off against any recovery by the plaintiff.

IV. Any debtor aggrieved by a debt collector's practices in violation of this chapter may bring an action individually and/r on behalf of others similarly situated in the superior court of the county in which he resides to restrain such practices by temporary or permanent injunction. If the debtor prevails in an action authorized by this paragraph, he shall be entitled to his costs and reasonable attorney's fees.

V. If the court finds that an action initiated under this chapter was frivolous and brought to harass the debt collector, the debtor shall pay to the debt collector the costs of said action plus reasonable attorney fees.

VI. Any violation of the provisions of this chapter shall also constitute an unfair and deceptive act or practice within the meaning of RSA 358-A:2 and may be enforced by the attorney general pursuant to RSA 358-A.

History

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§ 384-G:14. Enforcement.

I. Subject to federal preemption where applicable, the bank commissioner shall administer and enforce the provisions of this chapter. The bank commissioner may take enforcement action to remedy any act or practice which violates this chapter, including injunctive relief and restitution.

II. Any borrower injured by any such act or practice in violation of RSA 384-G may bring an action for damages and for such equitable relief, including an injunction, as the court deems necessary and proper, against a bank. A prevailing plaintiff shall be awarded reasonable attorneys' fees and costs, as determined by the court. If the court finds that an action initiated by the plaintiff under this paragraph was frivolous, the court shall give reasons thereof in writing and may assess reasonable attorneys' fees and costs.

History

Source. 2002, 225:1, eff. July 16, 2002.

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§ 490:14-a. Penalties for Frivolous Appeals.

If upon the hearing of any appeal, reserved case or bill of exceptions, it clearly appears that the appeal, reserved case or bill of exceptions is frivolous, immaterial or intended for delay, then the court, upon motion of a party or its own motion, may award against the moving party double the amount of the costs incurred by the prevailing party beginning with the entry of the appeal, reserved case of bill of exceptions, and also interest at the rate of 12 percent per annum on any amount which has been previously found due or for which a verdict has been recovered or which the moving party has been ordered to pay.

History

Source. 1971, 456:12, eff. Aug. 29, 1971.

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§ 491:24. Civil Suits Against Municipal Officials.

I. Whenever a municipal official or individual member of a municipal board or agency, who is subject to good faith immunity under the provisions of RSA 31:104 or the common law of New Hampshire, is sued personally for money damages and the plaintiff alleges injury or damage resulting from action taken in bad faith or with malice on the part of the official or member when acting in his official capacity, the superior court shall hold a preliminary hearing within 90 days of the return date of the action.

II. At the hearing the plaintiff shall demonstrate that the allegation of bad faith or malice is based upon information and belief formed after reasonable inquiry and well grounded in fact and that there is a substantial likelihood that, following discovery, evidence shall be adduced sufficient to create an issue for determination by the finder of fact. If the plaintiff fails in such demonstration, the action against such official or member shall be dismissed.

III. If, upon all the evidence presented at the hearing, the court determines that the action is frivolous or intended to harass or to influence the official actions or decisions of the municipal official or board member, the plaintiff shall pay the court costs and reasonable attorneys' fees of the defendant.

History

Source. 1989, 169:1, eff. Jan. 1, 1990.

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§ 507:15. Penalties for Frivolous Actions.

If, upon the hearing of any contract or tort action, it clearly appears to the court that the action or any defense is frivolous or intended to harass or intimidate the prevailing party, then the court, upon motion of the prevailing party or on its own motion, may order summary judgment against the party who brought such action or raised such defense, and award the amount of costs and attorneys' fees incurred by the prevailing party plus $1,000 to be paid to the prevailing party, provided such costs and fees are reasonable. The trial judge shall also report such conduct to the supreme court committee on professional conduct.

History

Source. 1986, 227:3, eff. July 1, 1986. 1996, 2:2, eff. July 1, 1996.

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frivolous actions against teachers

§ 507-G:4. Penalties for Frivolous Actions Against Employees.

I. If, during any phase of a tort action brought against an employee which results from an action taken while the employee is directly engaged in student-related services, it appears to the court by a preponderance of evidence that the action is frivolous, or intended to harass or intimidate the named employee or any other employee involved in the student-related services at issue, or both; then the court, upon motion of a party or upon its own motion, may order summary judgment or other relief against the party who brought such action, and it shall award costs and reasonable attorneys' fees to the prevailing party or parties. Costs shall include, but not be limited to, all reasonable pre-trial investigation and tribunal time and expenses. The court shall report such conduct to the professional conduct committee.

II. In addition to the above, the court shall order the party bringing the action against an employee to pay the sum of $1,000 to each of the prevailing parties.

History

Source. 2002, 149:1, eff. July 14, 2002.

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Landlord Tenant Prohibited Practices

§ 540-A:4. Remedies.

I. All district courts shall have concurrent jurisdiction with the superior court to enforce the provisions of RSA 540-A:2 and RSA 540-A:3.

II. Any tenant or landlord may seek relief from a violation of RSA 540-A:2 or RSA 540-A:3 by filing a petition in the district or county where the rental premises are located.

III. No filing fee shall be charged for a petition under paragraph II, and the plaintiff may proceed without legal counsel. Either a peace officer or the sheriff's department shall serve process under this section and the cost of such service shall be billed as directed by the court pursuant to paragraph X. Any proceeding under this subdivision shall not preclude any other available civil or criminal remedy.

IV. The clerks of the district courts shall supply forms for petitions for relief under this subdivision designed to facilitate proceedings.

V. The findings of facts shall be final but questions of law may be transferred to the supreme court in the same manner as from the superior court.

VI. The court shall hold a hearing within 30 days of the filing of a petition under paragraph II or within 10 days of service of process upon the defendant, whichever occurs later.

VII. Upon a showing of a violation of RSA 540-A:2 or RSA 540-A:3, I, II, or III, the court shall grant such relief as is necessary to protect the rights of the parties. Such relief may include:

(a) An order prohibiting the defendant from continuing the activity or activities which violate RSA 540-A:2 or RSA 540-A:3; and

(b) An award of damages to the plaintiff for the violations of RSA 540-A, breach of warranty of habitability, breach of the covenant of quiet enjoyment or any other claim arising out of the facts alleged in the plaintiff's petition.

VIII. Upon the showing of an immediate threat of irreparable harm, the court may issue such temporary orders as it deems necessary to protect the parties with or without actual notice to the defendant. If temporary orders are made ex parte, the party against whom such relief is issued may file a written request with the clerk of the court and request a hearing on such request. Such hearing shall be held no later than 5 days after the request is received by the clerk. Such hearings may constitute the final hearing described in paragraph VI.

IX. Any landlord or tenant who violates RSA 540-A:2 or any provision of RSA 540-A:3 shall be subject to the civil remedies set forth in RSA 358-A:10, including costs and reasonable attorney's fees incurred in the proceedings. Each day that a violation continues shall constitute a separate violation.

X. If an action initiated under RSA 540-A:3 is found to be frivolous or brought solely for harassment, the plaintiff shall pay to the defendant the costs of said action including reasonable attorney's fees. If such frivolous action was brought by the tenant, he shall not be entitled to the protection of paragraph XI of this section.

XI. No action for possession may be maintained by the landlord against a tenant who proves a violation of RSA 540-A:3 except for nonpayment of rent, violation of a substantial obligation of the rental agreement or lease, or violation of this subdivision within 6 months of an action

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instituted under this subdivision by a tenant; nor shall the landlord take any other action in reprisal.

History

Source. 1979, 305:1. 1985, 100:4, 5. 1990, 218:1, eff. Jan. 1, 1991.

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inmate litigati

§ 623-B:3. Affidavit.

I. A court may authorize the commencement, prosecution, or defense of any civil action or proceeding without prepayment of fees and costs, by an inmate who makes an affidavit that such inmate is unable to pay such fees or costs. The affidavit shall contain complete information as to the inmate's identity, nature, and amount of income, spouse's income if available to the inmate, property owned, cash or checking accounts, dependents, debts and monthly expenses and the amount of money deposited in such inmate's account for the last 3 months. The affidavit shall contain a statement under oath that the claim has not been previously brought against the same parties or from the same operative facts in any state or federal court. The court may develop a form questionnaire which it may require by local rule to be filed to implement this statute.

II. A court in which an affidavit of inability to pay has been filed may dismiss the action in whole or in part on a finding that the allegation of poverty is false; or the action or a portion of the action is frivolous or malicious. Indetermining whether an action is frivolous or malicious, the court may consider whether the claim has no arguable basis in law or fact; or whether the claim is substantially similar to a previous claim either in that it is brought against the same parties or in that the claim arises from the same operative facts as a previous claim. If a portion of the action is dismissed, the court shall also designate the issues and defendants on which the action is to proceed without paying costs. This order is subject only to an interlocutory appeal.

III. If the court authorizes the commencement of the action and the court concludes, based on information contained in the affidavit or other information available to the court, that such inmate is able to pay part of the fees or costs, then the court shall order a partial payment to be made as a condition of the commencement or further prosecution of the action.

History

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§ 676:17-a. Cease and Desist Orders.

The building inspector, code enforcement officer, zoning administrator or other official designated as an enforcement authority by ordinance or resolution of the local legislative body may issue a cease and desist order against any violation of this title, any local ordinance, code or regulation adopted under this title, or any provision or specification of an application, plat, or plan approved by, or any requirement or condition of a permit or decision issued by, any local administrator or land use board acting under the authority of this title, subject to the following:

I. The order shall state, in writing:

(a) The precise regulation, provision, specification or condition which is being violated.

(b) The facts constituting the violation, including the date of any inspection from which these facts were ascertained.

(c) The corrective action required, including a reasonable time within which such action shall be taken.

(d) A statement that a motion for summary enforcement of the order shall be made to the court of the district in which the property is situated unless such corrective action is taken within the time provided, or unless an answer is filed within 20 days, as provided in paragraph V.

(e) A statement that failure to either take the corrective action, or to file an answer, may result in corrective action being taken by the municipality, and that if this occurs the municipality's costs shall constitute a lien against the real estate, enforceable in the same manner as real estate taxes, including possible loss of the property if not paid.

II. The order shall be served upon the record owner of the property or the record owner's agent, and upon the person to whom taxes are assessed for the property, if other than the owner, and upon any occupying tenant of the property, and upon any other person known by the enforcing officer to exercise control over the premises in violation, and upon all persons holding mortgages upon such property as recorded in the office of the register of deeds, in the same manner provided for service of a summons in a civil action in district court. Personal service may be made by a sheriff, deputy sheriff, local police officer, or constable. If the owner is unknown or cannot be found, the order shall be served by posting it upon the property and by 4 weeks' publication in a newspaper in general circulation in the municipality.

III. Upon service of the order, the owner or the owner's agent, occupying tenant or the tenant's agent, or any other person who is engaged in development, construction, excavation, or other changes of the land or buildings on the land shall cease immediately such activities, if so provided in the order, until such time as judgment is rendered under paragraphs VI or VII. Failure to cease such activity shall constitute a separate violation of this title in addition to the violation cited in the order, unless such order is annulled as provided in paragraph VII.

IV. A copy of the order with proof of service shall be filed with clerk of the district court of the district in which the property is located not fewer than 5 days prior to the filing of a motion to enforce under paragraph VI.

V. Within 20 days after the date of service, any person upon whom the order is served may serve an answer in the manner provided for the service of an answer in a civil action, specifically denying such facts in the order as are in dispute.

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VI. If no answer is served, the enforcement official may move the court for the enforcement of the order. If such a motion is made the court may, upon the presentation of such evidence as it may require, affirm or modify the order and enter judgment accordingly, fixing a time after which the governing body may proceed with the enforcement of the order. The clerk of the court shall mail a copy of the judgment to all persons upon whom the original order was served.

VII. If an answer is filed and served as provided in paragraph V, further proceedings in the action shall be governed by the rules of the district court. If the order is sustained following trial, the court shall enter judgment and shall fix a time within which the corrective action shall be taken, in compliance with the order as originally filed, or as modified by the court. If the order is not sustained, it shall be annulled and set aside. If it appears to the court that the order was frivolous, was commenced in bad faith, or was not based upon information and belief formed after reasonable inquiry or was not well-grounded in fact, then the court shall order the defendant's costs and reasonable attorneys fees to be paid by the municipality. The clerk of the court shall mail a copy of the judgment to the persons upon whom the original order was served.

VIII. If a judgment is not complied with in the time prescribed, the local governing body may cause the corrective action to be taken as set forth in the judgment. The cost to the municipality of taking such corrective action together with its other expenses as provided in paragraph IX, shall be a lien against the real estate on which the violation occurred, which shall continue for 18 months from the date upon which the expense account is allowed by the court, as provided in paragraph IX.

IX. The municipality shall keep an accurate account of the expenses incurred in carrying out the order and of all other expenses in connection with its enforcement, including but not limited to filing fees, service fees, publication fees, the expense of searching the registry of deeds to identify mortgages, witness and expert fees, attorneys fees and traveling expenses. The court shall examine, correct if necessary, and allow the expense account. The municipal governing body, by majority vote, may commit the expense account to the collector of taxes, in which case the mayor, as defined by RSA 672:9, shall direct the expense account, together with a warrant under the mayor's hand and seal, to the municipal tax collector, requiring the tax collector to collect the same from the person to whom real estate taxes are assessed for the premises upon which such corrective action was taken, and to pay the amount so collected to the municipal treasurer. Within 30 days after the receipt of such warrant, the collector shall send a bill as provided in RSA 76:11. Interest as provided in RSA 76:13 shall be charged on any amount not paid within 30 days after the bill is mailed. The collector shall have the same rights and remedies as in the collection of taxes, as provided in RSA 80.

X. A party aggrieved by the judgment of the district court may appeal, within 15 days after the rendering of such judgment, to the superior court.

XI. The remedy provided in this section is supplementary to other enforcement remedies provided by this chapter or local ordinance. At the discretion of the local enforcement official, an action to enforce a cease and desist order under this section may be joined with an action under RSA 676:17, I, and the cease and desist order shall constitute the written notice under RSA 676:17, I(b).

History

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Voting Sheets

HOUSE COMMITTEE ON PUBLIC WORKS AND HIGHWAYS

EXECUTIVE SESSION on SB 169

BILL TITLE: **relative to frivolous actions against the state concerning state construction projects.**

DATE: May 7, 2003

LOB ROOM: 201

Amendments:

Sponsor: Rep. Smith	OLS Document #:	2003	1485h
Sponsor: Rep.	OLS Document #:		
Sponsor: Rep.	OLS Document #:		

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. McConkey ON AMENDMENT 2003-1485h

Seconded by Rep. Waterhouse

Vote: 10-8 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Bouchard

Seconded by Rep. Malloy

Vote: 8-10 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: REGULAR

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. James B. Rausch, Clerk

HOUSE COMMITTEE ON PUBLIC WORKS AND HIGHWAYS

EXECUTIVE SESSION on SB 169

BILL TITLE: **relative to frivolous actions against the state concerning state construction projects.**

DATE: 5-7-03

LOB ROOM: 201

Amendments:

Sponsor: Rep. Smith — OLS Document #: 2003-1485h

Sponsor: Rep. — OLS Document #:

Sponsor: Rep. — OLS Document #:

Motions: (OTP), OTP/A, ITL, Interim Study (Please circle one.) Amendment #1485h OTP

Moved by Rep. McConkey

Seconded by Rep. Westerhaus

Vote: (Please attach record of roll call vote.) 10-8 on OTP, 1485h

Motions: OTP, OTP/A, (ITL), Interim Study (Please circle one.)

Moved by Rep. Bouchard

Seconded by Rep. Kelley

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. James B. Rausch, Clerk

OFFICE OF THE HOUSE CLERK 2003 SESSION

PUBLIC WORKS AND HIGHWAYS

Bill #: SB169 Title: Roll call on Amendment only

PH Date: 4/24/03 Exec Session Date: 5/7/03

Motion: Amendment OTP Amendment #: 2003 1485h

MEMBER	YEAS	NAYS
Smith, Edwin O, Chairman	✓	
Leber, William E, V Chairman	✓	
Gleason, John P		✓
Moore, Benjamin E	✓	
Graham, John A	✓	
Holland, James E	✓	
Rausch, James B, Clerk	✓	
Tahir, Saghir A	✓	
Keans, Sandra B		✓
Gionet, Edmond D absent		
Kenison, Leon S absent		
McConkey, Mark E	✓	
O'Brien, Lori J	✓	
Waterhouse, Kevin K	✓	
Cloutier, John R		✓
Bouchard, Candace C W		✓
Benn, Bernard L		✓
Norelli, Terie		✓
Malloy, Chris S		✓
Vallone, Matthew J		✓
	10	8

TOTAL VOTE:

Printed: 1/21/2003

OFFICE OF THE HOUSE CLERK 2003 SESSION

PUBLIC WORKS AND HIGHWAYS

Bill #: SB 169 Title: _____

PH Date: ___/___/___ Exec Session Date: 5/7/03

Motion: ITL/A (as amended) Amendment #: 1485h

MEMBER	YEAS	NAYS
Smith, Edwin O. Chairman		✓
Leber, William E. V Chairman		✓
Gleason, John P	✓	
Moore, Beniamin E		✓
Graham, John A		✓
Holland, James E		✓
Rausch, James B		✓
Tahir, Saghir A		✓
Keans, Sandra B	✓	
Gionet, Edmond D Absent		
Kenison, Leon S Absent		
McConkey, Mark E		✓
O'Brien, Lori J		✓
Waterhouse, Kevin K		✓
Cloutier, John R	✓	
Bouchard, Candace C W	✓	
Benn, Bernard L	✓	
Norelli, Terie	✓	
Mallov, Chris S	✓	
Vallone, Matthew J	✓	
ITL/A Failed	8	10
TOTAL VOTE:		

HOUSE COMMITTEE ON PUBLIC WORKS AND HIGHWAYS

EXECUTIVE SESSION on SB 169

BILL TITLE: **relative to frivolous actions against the state concerning state construction projects.**

DATE: May 13, 2003

LOB ROOM: 201

Amendments:

Sponsor: Rep. Smith	OLS Document #:	2003	1485h
Sponsor: Rep. Keans	OLS Document #:	2003	1425h
Sponsor: Rep.	OLS Document #:		

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Graham ON AMENDMENT 2003-1485h Passed

Seconded by Rep. McConkey

Vote: 9-7 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Benn ON AMENDMENT 2003-1425h FAILED

Seconded by Rep. Norelli

Vote: 8-10 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: REGULAR

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. James B. Rausch, Clerk

HOUSE COMMITTEE ON PUBLIC WORKS AND HIGHWAYS

EXECUTIVE SESSION on SB 169

BILL TITLE: **relative to frivolous actions against the state concerning state construction projects.**

DATE: 5-13-03

LOB ROOM: 201

Amendments:

Sponsor: Rep. Smith — OLS Document #: 2003-1485h - passed

Sponsor: Rep. Kehoe — OLS Document #: 2003-1425h - failed

Sponsor: Rep. — OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.) on amendment — amendment passed 9-7 — 2003-1485h

Moved by Rep. Rausch

Seconded by Rep. McConkey

Vote: (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.) Amendment # 2003-1425h

Moved by Rep. Benn

Seconded by Rep. Morelli

Vote: (Please attach record of roll call vote.) 8-10 failed

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. James B. Rausch, Clerk

OFFICE OF THE HOUSE CLERK

2003 SESSION

PUBLIC WORKS AND HIGHWAYS

Bill #: SB 169 Title: _____

PH Date: ____/____/____ Exec Session Date: 5/13/03

Motion: OTP Amendment #: 2003-1425h

MEMBER	YEAS	NAYS
Smith. Edwin O. Chairman		✓
Leber. William E. V Chairman		✓
Gleason. John P	✓	
Moore. Beniamin E		✓
Graham. John A		✓
Holland. James E		✓
Rausch. James B		✓
Tahir. Saghir A Absent		
Keans. Sandra B	✓	
Gionet. Edmond D		✓
Kenison. Leon S Absent		
McConkey. Mark E		✓
O'Brien. Lori J		✓
Waterhouse. Kevin K		✓
Cloutier. John R	✓	
Bouchard. Candace C W	✓	
Benn. Bernard L	✓	
Norelli. Terie	✓	
Mallov. Chris S	✓	
Vallone. Matthew J	✓	
OTP Failed	8	10
TOTAL VOTE:		

HOUSE COMMITTEE ON PUBLIC WORKS AND HIGHWAYS

EXECUTIVE SESSION on SB 169

BILL TITLE: **relative to frivolous actions against the state concerning state construction projects.**

DATE: May 13, 2003

LOB ROOM: 201

Amendments:

Sponsor: Rep. Smith — OLS Document #: 2003 1485h

Sponsor: Rep. — OLS Document #:

Sponsor: Rep. — OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Leber MAJORITY AMEND 2003-1485h

Seconded by Rep. Waterhouse

Vote: 11-7 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Norelli MINORITY AMEND 2003-1425h

Seconded by Rep. Benn

Vote: 7-11 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: REGULAR

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. James B. Rausch, Clerk

HOUSE COMMITTEE ON PUBLIC WORKS AND HIGHWAYS

EXECUTIVE SESSION on SB 169

BILL TITLE: **relative to frivolous actions against the state concerning state construction projects.**

DATE: May 13, 2003

LOB ROOM: 201

Amendments:

Sponsor: Rep. Smith OLS Document #: 2003-1485h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP/OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Leber majority

Seconded by Rep. Valerio

Vote: (Please attach record of roll call vote.) 11-7

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. ~~Valerio~~ - Minority

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. James B. Rausch, Clerk

OFFICE OF THE HOUSE CLERK

2003 SESSION

PUBLIC WORKS AND HIGHWAYS

Bill #: SB 169 Title: _____

PH Date: ____/____/____ Exec Session Date: 5/13/03

Motion: OTP/A Amendment #: 2003-1485h

MEMBER	YEAS	NAYS
Smith. Edwin O. Chairman	✓	
Leber. William E. V Chairman	✓	
Gleason. John P	✓	
Moore. Beniamin E	✓	
Graham. John A	✓	
Holland. James E	✓	
Rausch. James B	✓	
Tahir. Saghir A absent		
Keans. Sandra B		✓
Gionet. Edmond D	✓	
Kenison. Leon S absent		
McConkey. Mark E	✓	
O'Brien. Lori J	✓	
Waterhouse. Kevin K	✓	
Cloutier. John R		✓
Bouchard. Candace C W		✓
Benn. Bernard L		✓
Norelli. Terie		✓
Mallov. Chris S		✓
Vallone. Matthew J		✓
OTP/A	11	7

TOTAL VOTE:

Committee Report

MAJORITY
COMMITTEE REPORT

COMMITTEE: **Public Works and Highways**

BILL NUMBER: **SB 169**

TITLE: relative to frivolous actions against the state concerning state construction projects.

DATE: May 13, 2003 CONSENT CALENDAR YES ☐ NO ☒

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

The 10-Year Highway Plan process takes two years to complete starting in the odd year. Public input is encouraged very often through the process. Local government is the beginning of the process and from there the planning process moves to the regional planning boards. Next, the Governor and Council who have a part in refining the plan to be sent to the legislature. With legislation in the even year, the 10-Year Highway Plan is complete. All of the projects then get to serious planning while in the possession of the Department of Transportation. Hearings are held at various places near the proposed construction sites during this phase. At this point the planning and engineering become a workable document requiring permits at a considerable cost. It is after this and the permits are obtained that this legislation is implemented. The majority of the committee felt that this step should be added to avoid construction delays jeopardizing the safety of anyone using our highways in need of upgrading. The committee felt that with public input all along it is necessary to have an end. The committee wants to allow all parties to continue progressive actions involved in projects. A great deal of testimony was received in respect to frivolous lawsuits and their associated impacts. The bill increases the penalty a court may impose. This is limited to state construction projects, and is very narrow in scope. Current statutes address frivolous actions in a very broad way. The majority of the committee felt that this approach limiting the scope to only state construction projects would be best.

Vote 11-7.

Rep. William E. Leber
FOR THE MAJORITY OF THE
COMMITTEE

Public Works and Highways

SB 169, relative to frivolous actions against the state concerning state construction projects. **OUGHT TO PASS WITH AMENDMENT**

Rep. William E. Leber for the Majority of Public Works and Highways: The 10-Year Highway Plan process takes two years to complete starting in the odd year. Public input is encouraged very often through the process. Local government is the beginning of the process and from there the planning process moves to the regional planning boards. Next, the Governor and Council who have a part in refining the plan to be sent to the legislature. With legislation in the even year, the 10-Year Highway Plan is complete. All of the projects then get to serious planning while in the possession of the Department of Transportation. Hearings are held at various places near the proposed construction sites during this phase. At this point the planning and engineering become a workable document requiring permits at a considerable cost. It is after this and the permits are obtained that this legislation is implemented. The majority of the committee felt that this step should be added to avoid construction delays jeopardizing the safety of anyone using our highways in need of upgrading. The committee felt that with public input all along it is necessary to have an end. The committee wants to allow all parties to continue progressive actions involved in projects. A great deal of testimony was received in respect to frivolous lawsuits and their associated impacts. The bill increases the penalty a court may impose. This is limited to state construction projects, and is very narrow in scope. Current statutes address frivolous actions in a very broad way. The majority of the committee felt that this approach limiting the scope to only state construction projects would be best. **Vote 11-7.**

COMMITTEE REPORT

COMMITTEE: **Public Works and Highways**

BILL NUMBER: **SB 169**

TITLE: relative to frivolous actions against the state concerning state construction projects.

DATE: May 13, 2003 CONSENT CALENDAR YES ☐ NO ☒

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

The 10-Year Highway Plan process takes two years to complete starting in the odd year. Public input is encouraged very often through the process. Local government is the beginning of the process and from there the planning process moves to the regional planning boards. Next, the Governor and Council who have a part in refining the plan to be sent to the legislature. With legislation in the even year, the 10-Year Highway Plan is complete. All of the projects then get to serious planning while in the possession of the Department of Transportation. Hearings are held at various places near the proposed construction sites during this phase. At this point the planning and engineering become a workable document requiring permits at a considerable cost. It is after this and the permits are obtained that this legislation is implemented. The majority of the committee felt that this step should be added to avoid construction delays jeopardizing the safety of anyone using our highways in need of upgrading. The committee felt that with public input all along it is necessary to have an end. The committee wants to allow all parties to continue progressive actions involved in projects. A great deal of testimony was received in respect to frivolous lawsuits and their associated impacts. The bill increases the penalty a court may impose. This is limited to state construction projects, and is very ~~limited~~ narrow in scope. Current statutes address frivolous actions on a very broad ~~scope~~ case. The majority of the committee felt that this approach limiting the scope to only state construction projects would be best.

605

Vote 11-7.

Rep. William E. Leber
FOR THE MAJORITY OF THE
COMMITTEE

Original: House Clerk

Split Report

MINORITY
COMMITTEE REPORT

COMMITTEE: **Public Works and Highways**

BILL NUMBER: **SB 169**

TITLE: relative to frivolous actions against the state concerning state construction projects.

DATE: May 13, 2003 CONSENT CALENDAR YES ☐ NO ☒

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

The minority asks you to vote against the majority amendment and for the minority amendment. Commissioner Murray of the Department of Transportation neither supports or opposes this bill, but offered testimony that indicates frivolous lawsuits have not been the principle reason for delays in state construction projects. It is the minority's opinion that this bill will do nothing to improve the approval process or shorten the timeframe of those projects. Existing statutes on frivolous lawsuits have served the public well for many years. The minority supports adjusting the potential penalty in the current statute to an appropriate but not punitive level. This bill as amended exposes potential litigants to penalties that could bankrupt the largest not-for-profit organization as well as almost any individual or small business. The effect of this bill will be to intimidate those that may have legitimate concerns, including municipalities, in order to keep them from challenging the state. The minority also believes that the bill may be in violation of Part 1Article 14 of the New Hampshire Constitution as well as the 5th and 14th amendments of the United States Constitution. Recently, the DOT has made determined and laudable public relations effort to represent itself as a "softer and gentler" agency. This bill will be detrimental to that effort.

Vote.

Rep. Bernard L. Benn
FOR THE MINORITY OF THE
COMMITTEE

Original: House Clerk
cc: Committee Bill file

Public Works and Highways

SB 169, relative to frivolous actions against the state concerning state construction projects. **OUGHT TO PASS WITH AMENDMENT**

Rep. Bernard L. Benn for the Minority Public Works and Highways: The minority asks you to vote against the majority amendment and for the minority amendment. Commissioner Murray of the Department of Transportation neither supports or opposes this bill, but offered testimony that indicates frivolous lawsuits have not been the principle reason for delays in state construction projects. It is the minority's opinion that this bill will do nothing to improve the approval process or shorten the timeframe of those projects. Existing statutes on frivolous lawsuits have served the public well for many years. The minority supports adjusting the potential penalty in the current statute to an appropriate but not punitive level. This bill as amended exposes potential litigants to penalties that could bankrupt the largest not-for-profit organization as well as almost any individual or small business. The effect of this bill will be to intimidate those that may have legitimate concerns, including municipalities, in order to keep them from challenging the state. The minority also believes that the bill may be in violation of Part 1Article 14 of the New Hampshire Constitution as well as the 5th and 14th amendments of the United States Constitution. Recently, the DOT has made determined and laudable public relations effort to represent itself as a "softer and gentler" agency. This bill will be detrimental to that effort.

Minority Report – SB169 OTP with amendment
Rep. Bernard L. Benn for the Minority of Public Works and Highways

The minority asks you to vote against the majority amendment and for the minority [redacted] amendment.

Commissioner Murray of Department of Transportation neither supports or opposes this bill, but offered testimony that indicates frivolous lawsuits have not been the principle reason for delays in State construction projects. It is the minority's opinion that SB169 will do nothing to improve the approval process or shorten the time frame of those projects. Existing statutes on frivolous lawsuits have served the public well for many years. The minority supports adjusting the potential penalty in the current statute to an appropriate but not punitive level.

SB169 as amended exposes potential litigants to penalties that could bankrupt the largest not-for-profit organization as well as almost any individual or small business. The effect of this bill will be to intimidate those that may have legitimate concerns, including municipalities, in order to keep them from challenging the State. The minority also believes that the bill may be in violation of Part 1-Article 14 of the NH Constitution as well as the 5th and 14th amendments of the U.S. Constitution.

Recently, the Department of Transportation has made a determined and laudable public relations effort to represent itself as a "softer and gentler" agency. SB169 will be detrimental to that effort.

EO>