2023 SESSION

23-0614
02/05

HOUSE BILL *171-FN*

AN ACT relative to bodily injury actions against governmental units.

SPONSORS: Rep. B. Boyd, Hills. 12

COMMITTEE: Judiciary

ANALYSIS

This bill changes the definition of employee or official of a governmental unit for purposes of determining liability of a governmental unit under RSA 507-B.
It also removes language restricting liability to injuries occurring from the operation of a motor vehicle on premises to premise-related injury.

- -

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

23-0614
02/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to bodily injury actions against governmental units.

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

1 Bodily Injury Actions Against Governmental Units; Definitions. RSA 507-B:1, I-a is repealed and reenacted to read as follows:
I-a. "Employee or official of a governmental unit" means any member of its governing body, administrative staff, or agencies, including staff, but limited to county employees, selectmen, school boards, chartered public school boards, city councils, and town councils and aldermen, town or city managers, mayors, regional planning commissioners, city health officials, police officers, firefighters, welfare, superintendents of schools, and all other employees or officials who are elected or appointed, and whether paid or unpaid, providing aid, service within the scope of his

or her official duties ***and his or her decisions, acts, or omissions are discretionary, rather than ministerial, and not made in a wanton or reckless manner***.

2 Bodily Injury Actions Against Governmental Units; Liability for Negligence. Amend RSA 507-B:2 to read as follows:

507-B:2 Liability for Negligence. A governmental unit may be held liable for damages in an action to recover for bodily injury, personal injury or property damage caused by its fault or by fault attributable to it[~~, arising out of ownership, occupation, maintenance or operation of all motor vehicles, and all premises; provided, however, that the liability of any governmental unit with respect to its sidewalks, streets, and highways shall be limited as provided in RSA 231 and the liability of any governmental unit with respect to publicly owned airport runways and taxiways shall be limited as set forth in RSA 422~~].

3 Effective Date. This act shall take effect 60 days after its passage.

LBA
23-0614
12/15/22

HB 171-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to bodily injury actions against governmental units.

FISCAL IMPACT: [ ] State [X] County [X] Local [ ] None

	Estimated Increase/(Decrease)			
COUNTY:	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**
Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

LOCAL:				
Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This changes the definition of employee or official of a governmental unit for purposes of determining liability under RSA 507-B. It also removes language restricting liability to only injuries from the operation of a motor vehicle or premise-related injury.

The New Hampshire Association of Counties indicates, by using 507-B's employee definition, the counties would be subject to the bill's qualifying for the much more broadly applicable 507-B protections by substituting the official definition. The bill also removes the premis

scope limitation, opening up all contexts for negligence suits based on claims of negligent performance of ministerial work. The bill would facilitate a wide range of new lawsuits that would be far costlier to defend and settle without the current RSA 507-B protections.

The New Hampshire Municipal Association states this bill would change the definition of an "employee or official of a governmental unit" in RSA chapter 507-B:1, I-a, and expand the circumstances under which a governmental unit could be held liable for damages. The definition of "employee or official of a governmental unit" is a threshold eligibility requirement for immunity protection under RSA chapter 507-B. The bill would change the definition by adding the requirement that the employee or official's acts, decisions, or omissions be discretionary, rather than ministerial, and not made in a wanton or reckless manner. This would allow lawsuits for ministerial functions, which would expand liability exposure for governmental units.
This legislation would also broaden the scope of municipality liability arising from bodily injury, personal injury, or property damage by striking language from RSA 507-B:2. This bill would limit immunity protection and increase the number of lawsuits that could be brought against a governmental unit, which would increase local expenditures.

It is assumed that any fiscal impact would occur after FY 2023.

AGENCIES CONTACTED:

New Hampshire Association of Counties and New Hampshire Municipal Association

CONSENT CALENDAR

February 1, 2023

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Judiciary to which was referred HB 171-FN,

AN ACT relative to bodily injury actions against governmental units. Having considered the same, report the same with the following resolution:

RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Joe Alexander

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**Judiciary**
Bill Number:	**HB 171-FN**
Title:	**relative to bodily injury actions against governmental units.**
Date:	**February 1, 2023**
Consent Calendar:	**CONSENT**
Recommendation:	**INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

This bill would reduce governmental immunity and expand the liability of governmental units by eliminating the restriction in current RSA 507-B that limits such liability to causes of action arising out of the ownership, operation, maintenance, or use of motor vehicles and premises. Instead, governmental units could be liable for any acts of simple negligence for ministerial actions and for any discretionary actions performed recklessly or wantonly. The Judiciary Committee was unanimous in its assessment that there is no justification to extend liability in this fashion and that this bill is just not needed.

Vote 19-0.

Rep. Joe Alexander
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Judiciary

HB 171-FN, relative to bodily injury actions against governmental units. **INEXPEDIENT TO LEGISLATE.**

Rep. Joe Alexander for Judiciary. This bill would reduce governmental immunity and expand the liability of governmental units by eliminating the restriction in current RSA 507-B that limits such liability to causes of action arising out of the ownership, operation, maintenance, or use of motor vehicles and premises. Instead, governmental units could be liable for any acts of simple negligence for ministerial actions and for any discretionary actions performed recklessly or wantonly. The Judiciary Committee was unanimous in its assessment that there is no justification to extend liability in this fashion and that this bill is just not needed.

Vote 19-0.

Original: House Clerk
Cc: Committee Bill File

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill #: HB 171 -FN Date: 1/19/23

Committee: Judiciary

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

Name	Address	Phone	Representing	Pro	Con
Elizabeth Sargent,			NH Assoc of Chiefs of Police		X

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 171-FN

BILL TITLE: **relative to bodily injury actions against governmental units.**

DATE: **January 19, 2023**

LOB ROOM: **206-208** **Time Public Hearing Called to Order:** **9:56 a.m.**

Time Adjourned: **10:22 a.m.**

Committee Members: Reps. Stapleton, Tripp, Lynn, Wallace, Kuttab, Alexander Jr., Andrus, Greeson, K. Perez, M. Smith, Horrigan, Kenney, M. Paige, McBeath, Devine, Lanza, Manos and Turer

Bill Sponsors:
Rep. B. Boyd

TESTIMONY

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

1. **Rep Bill Boyd**, **Sponsor.**
- Introduced bill for constituent, Atty Beville. (Submitted last year under HB 1044)
2. **Bob Beville**, Attorney. **Supports**.
- Codifies ministerial liability.
- When districts are harming kids in school, parents can't hold them liable.
*Will submit online testimony
- Rep Alexander asked about adding the word intentional to line 10, Atty Beville amenable.
3. **Mark Beaudoin**, NH Police Assn, NH Troopers Assn. **Opposes**.
- Concerned of unintended consequences.
- Would like to see addressed under RSA 191, and not overreaching over all state employees.
- Concerned about negatively impacting qualified immunity due to police retention issues. Puts life on line, doesn't w
4. **Marissa Chase**, NHAJ. **Supports.**
- Only immunity you need is to act responsibility.
*Submitted written testimony
5. **Natch Greyes**, Attorney NHMA. **Opposes.**
- Concerned of unintended consequences to municipalities.

Respectfully submitted,

Rep. Katelyn Kuttab, Clerk

House Remote Testify

Judiciary Committee Testify List for Bill HB171 on 2023-01-19

Support: 5 Oppose: 1 Neutral: 0 Total to Testify: 0

Export to Excel

Name	City, State Email Address	Title	Representing	Position	Testifying	Non-Germane
Walbridge, Tracy	Rochester, NH tracywalbridge@gmail.com	A Member of the Public	Myself	Support	No	No
Bouchard, Shannon	Sandown, NH Bouchardshannon92@gmail.com	A Member of the Public	Myself	Support	No	No
Ryll, Brian	Concord, NH tyler@pffnh.org	A Lobbyist	PFFNH	Oppose	No	No
Gildersleeve, Darlene	Hopkinton, NH dmcote88@gmail.com	A Member of the Public	Myself	Support	No	No
Shea, Katherine	Goffstown, NH klynshea4618@gmail.com	A Member of the Public	Myself	Support	No	No
Pike, Jennifer	New London, NH jennifer-pike@comcast.net	A Member of the Public	Myself	Support	No	No

Shannon Bouchard

I believe this is much needed bill in NH. My IDEA eligible daughter was bullied over her disability by both peers and teachers. Even after using the Manifest Educational Hardship and being found to have a hardship attending her district the wording on that bill is also poorly worded and there is actually no recourse on having the law followed. Not making schools accountable to follow the laws set forth by the state in issues like bullying and following a special education students IEP with any fidelity. These children are being lost and emotionally the trauma from just trying to be educated has lifetime consequences for their emotional wellbeing. By allowing parents to actually hold districts accountable in a court of law will be a game changer in parental and student education rights. Districts have attorneys on staff that can blur the lines of these laws and students and parents are definitely denied what is promised by law. Most parents do not have

HB171-FN (4)

DL&G DOUGLAS, LEONARD & GARVEY, P.C.

ATTORNEYS

Charles G. Douglas, III*
C. Kevin Leonard
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* also admitted in MA
** also admitted in ME

January 19, 2023

House Judiciary Committee
LOB
Concord, NH 03301

Via email delivery

Dear Honorable Members of the Committee:

I am an attorney who represents primarily plaintiffs in New Hampshire. In my career I have worked with citizens who have been seriously injured by conduct of municipal employees. These people would have civil claims available to them, to compensate them for economic and emotional losses incurred due to their injuries but for the existence of special immunity protections available only to the municipal employees who harmed them. I write you today to educate you as to these immunities, how they have been expanded so as to deny relief to those deserving of it, and how they might be narrowed, reasonably, to allow citizens to obtain relief while still providing adequate security for municipal employees in the performance of their jobs.

Why do we have immunity for government and its employees?

The concept dates back to British law and its "sovereign immunity." The original idea was to immunize the sovereign, or king, from having to change his *policies* due to lawsuits with resulting instability. Later, as immunity law developed, including in this country, the concern became for government employees *themselves*, and specifically that they would not perform their jobs effectively if they were afraid of lawsuits resulting from their decision-making on the job.

What immunities have been put in place for New Hampshire government and its employees?

New Hampshire *state* government and employees are protected by RSA 541-B:19 which immunizes against:

(a) Any claim which is based upon the exercise of a legislative or judicial function *(policy-making function)*

(b) Any claim based upon an act or omission of a state officer, employee, or official when such officer, employee, or official is exercising due care in the execution of any statute or any rule of a state agency (*any claim where the facts are that the employee was not being negligent in the course of employment*)

(c) Any claim based upon the exercise or performance or the failure to exercise or perform a discretionary executive or planning function or duty on the part of the state or any state agency or a state officer, employee, or official acting within the scope of his office or employment. (*policy-making function*)

(d) Any claim arising out of an intentional tort, including assault, battery, false imprisonment, false arrest, intentional mental distress, malicious prosecution, malicious abuse of process, libel, slander, misrepresentation, deceit, invasion of privacy, interference with advantageous relations, or interference with contractual relations, provided that the employee whose conduct gives rise to the claim reasonably believes, at the time of the acts or omissions complained of, that his conduct was lawful, and provided further that the acts complained of were within the scope of official duties of the employee for the state. (*any claim where the facts are the employee took intentional action causing harm, but the employee thought his conduct was lawful*)

Meanwhile, for municipal government and employees, RSA 507-B:2, 4 and 5 together immunize against:

> all claims based on negligent conduct, unless they bear a nexus to "ownership, operation, maintenance or occupation" of municipal premises or vehicles
>
> all claims based on intentional conduct performed within the scope of employment and with a "reasonable belief in the lawfulness of the conduct."

Notice that the *municipalities* and *municipal* employees have *greater* immunity under the statutes than do the state and its employees. Specifically, the state and its employees may be sued for all manner of negligent conduct, even if it does not have a connection state premises or vehicles, but municipalities and municipal employees may not be sued for such conduct disconnected for premises or vehicles.

This development does not seem to make sense, especially considering that immunity was originally intended to protect the highest level of authority, the king. By analogy, what has developed under New Hampshire statute is a system whereby the king may be sued for harm resulting from lack of "due care" outside of operation of premises and vehicles, but the county sheriff may not be.

Although the New Hampshire Supreme Court has not yet addressed the question, the disparity may also violate the equal protection clause of the New Hampshire Constitution, because under our current statutory framework, citizens injured by negligence of state employees have legal redress whereas similarly-situated citizens (with near identical claims) injured by county, city, or town actors do not have legal redress.

In addition to these statutory immunities, New Hampshire government and their employees have common law (court made) immunities, such as:

"discretionary function" immunity – barring suit against (state or local) government for harm resulting from a) exercise of legislative or judicial function and (b) the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion.

"official" immunity – barring suit against (state or local) government employee for any of their discretionary acts or omissions made within the scope of their duties, so long as not wantonly or recklessly made.

"vicarious" immunity – barring any suit against state or local government based on acts or omissions of its employee for which the employee has "official" immunity.

How do these layers of immunity, for especially municipalities and municipal employees, impact New Hampshire citizens?

New Hampshire municipal employees are able to negligently injure citizens under many, many circumstances, without citizens having civil redress. The only way a citizen has redress for negligence under our current framework is if he can show:

his claim bears a nexus to municipal vehicles or premises;

and

the employee's conduct was outside the scope of employment, or, was within it but was not "discretionary" conduct (meaning the conduct was a rote, dictated, ministerial part of the employee's job).

Here is what this looks like in practice:

- A public school teacher brings a crock pot to a Kindergarten classroom, filled with hot soup for a party and fails to use care supervising the pot or children around the pot. Child dumps pot suffering 3rd degree burns. No claim, because no nexus to premises or vehicles.

- Town police officer serves a search warrant with service weapon drawn and finger negligently on the trigger of weapon. Trips and finger on trigger discharges weapon. No claim because, even though a clear violation of protocol to hold weapon this way (ministerial conduct) no nexus to municipal premises or vehicles.

- Public school principal has reason to know based on texts and social media posts that child will be "junped" in the school cafeteria. Exercises administrative discretion to not intervene and attend to other school matters. Child is badly beaten in school cafeteria. No claim because of Principal discretionary decision-making and also no nexus to premises and vehicles.

- County correctional officer has reason to know inmate is unstable and violent but makes discretionary decision to attend to paperwork and not closely supervise while unrestrained inmate is in visitation room with citizen. Inmate beats citizen. No claim because of discretionary decision-making and no nexus to premises operation or vehicles.

Given the above examples, involving serious, unremediated injury, and given the inconsistency between state (sovereign) immunity under RSA 541-B:19 and municipal immunity under 507-B (barring all negligence suits unrelated to premises and vehicles), a reasonable first step toward narrowing overbroad municipal immunity might be to amend 507-B:2, by eliminating the premises and vehicles language, so as to make the statue match immunity at the state level.

I welcome any questions you might have. Thank you.

Respectfully Submitted,

/s/ *Megan Douglass*
Megan Douglass

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 171-FN

BILL TITLE: relative to bodily injury actions against governmental units.

DATE: February 1, 2023

LOB ROOM: 206-208

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Alexander Jr. Seconded by Rep. Lynn Vote: 19-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Katelyn Kuttab, Clerk

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/10/2023 9:53:34 AM
Roll Call Committee Registers Report

2023 SESSION

Judiciary

Bill #: HB171-FN **Motion:** ITL **AM #:** — **Exec Session Date:** 1Feb23

Members	YEAS	Nays	NV
Lynn, Bob J. Chairman	✓		
Wallace, Scott Vice Chairman	✓		
Alexander, Joe H.	✓		
Andrus, Louise	✓		
Testerman, Dave	✓		
Stapleton, Walter A. Absent			
Tripp, Richard P.	✓		
Greeson, Jeffrey	✓		
Kuttab, Katelyn Clerk	✓		
Perez, Kristine	✓		
Smith, Marjorie K.	✓		
Horrigan, Timothy O.	✓		
DiLorenzo, Charlotte I.	✓		
~~Kenney, Cam E.~~ Eaton	✓		
Paige, Mark	✓		
~~McBeath, Rebecca Susan~~ Brennan	✓		
Devine, Shelley	✓		
Lanza, Judi	✓		
Manos, Zoe R	✓		
Turer, Eric S	✓		
TOTAL VOTE:	19	0	—