

# Senate Judiciary Committee

*Brendan Bunnell 271-4063*

**HB 1064-FN**, relative to liability of governmental units.

**Hearing Date:** April 2, 2026

**Time Opened:** 1:10 p.m.

**Time Closed:** 2:21 p.m.

**Members of the Committee Present:** Senators Gannon, Abbas, Altschiller and Reardon

**Members of the Committee Absent:** Senator Carson

**Bill Analysis:** This bill:

I. Modifies the standards and amounts for which a governmental unit may be held liable for negligence resulting in personal injury or property damage.

II. Requires political subdivisions to indemnify employees absent wanton or reckless conduct for negligent conduct resulting in personal injury or property damage, if the action was within the scope of the employment.

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**Sponsors:**

Rep. Kuttab  
Rep. Gregg  
Sen. Birdsell

Rep. Lynn  
Rep. Drago

Rep. Berch  
Rep. Litchfield

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**Who supports the bill:** Representative Kaitlyn Kuttab, Representative Alicia Gregg, Representative Gaby Grossman, Representative Daniel Popovici-muller, Nicholas Kline (Shaheen & Gordon), Leslie Nixon, Lori Korzen, Cory Stone, Curtis Howland, Pamela Harders, Daniel Richardson, Leigh Hutchinson.

**Who opposes the bill:** Barrett M. Christina (NHSBA), Sarah Burke Cohen (NHMA), Kate Horgan (NHAC), Cam Lapine (APCIA), Lindsay Nadeau (NHAOIC), Jonathan Melanson (NH Katherine Phelps), Bob Blaisdell (NH State Employees Assoc.), Commissioner Lovlien, Representative Timothy Horrigan, Ed Morris (Town of Enfield), Town Manager Todd Selig (Town of Durham, NH), Deaglan McEachern (City of Portsmouth), Lisa Sieverts, Roderick Cameron, Richard Krauss, Patricia Masterson, Bonnie Hill, Mark Mulert, Scott Chouinard, William Booth, Scot Heath, James Gregoire, Herbert Healy, Brad Roscoe, Thomas Julius, Lynn Leighton, Shaw Tilton, Sara Hamilton, Alan Raff (New Hampshire AFL-CIO), Judith Burakowski, Lisa Anderson, Lisa Rivard.

**Who is neutral on the bill:** None.

**Summary of the testimony presented:**

**Representative Katelyn Kuttab** introduced the bill and described a case where a student in a public high school CTE program fell nearly 30 feet from a ladder while working on a barn, resulting in paralysis and a traumatic brain injury. She stated the teacher failed to follow basic safety requirements and did not ensure proper equipment was used.

- She emphasized that under current law, the student and family will likely receive no meaningful financial recovery due to limits on municipal liability. She explained the legal history beginning with the *Merrill v. Manchester* decision in 1974, which abolished municipal immunity and made municipalities liable like private entities.
- She said the legislature responded in 1975 with SB 4, which limited liability for political subdivisions while allowing only specific categories of claims such as motor vehicle incidents and certain premises liabilities. She noted that while the state later developed a more comprehensive liability statute, political subdivision law was never aligned with it despite attempts, including a 2015 study committee chaired by Senator Carson that agreed reform was needed but could not agree on language.
- She emphasized that the *Merrill* decision focused on fairness and accountability and that forcing injured individuals to bear losses caused by negligence violates basic principles of justice. She stated the bill aligns municipal liability with RSA 541-B, uses identical statutory language already interpreted by courts, and introduces no new terms.
- She clarified that qualified immunity applies to constitutional claims such as Section 1983 actions, while official immunity is the relevant concept here. She explained the bill indemnifies employees acting within the scope of their duties unless their conduct is wanton or reckless, consistent with existing case law.
- She cited insurance data showing that over a three-year period more than \$1 million in premiums were paid in the relevant district and that insurers still would have profited over \$700,000 even if the cap had been fully paid.
- She concluded that families should not face a system where catastrophic harm results in no accountability.

**Representative Alicia Gregg** testified in support and described the issue as a structural failure in the legal framework. She said governmental immunity has not been meaningfully updated in decades and that the current system shifts the financial

burden of negligence onto victims and families rather than institutions responsible for safety.

- She explained that low liability caps reduce incentives for safety, leading to deferred safety reviews, unaddressed supervision gaps, and underweighted warning signs.
- She outlined that the bill clarifies that governmental entities are held to the same negligence standard as private actors, raises liability caps to reflect real-world costs such as long-term medical care, rehabilitation, and lost earnings, and requires indemnification of employees acting within the scope of their duties while excluding wanton or reckless conduct.
- She emphasized the bill does not eliminate immunity for discretionary or policy decisions and applies only where a duty of care exists and is not met.
- Senator Abbas asked whether a first responder speeding during an emergency and causing an accident would be liable under the bill.
  - Representative Gregg responded that she is not an expert but noted the bill excludes wanton or reckless conduct and suggested that scenario likely would not fall under liability, while deferring to the prime sponsor for a definitive answer.

**Representative Gaby Grossman** testified in support as both a legislator and the parent of the injured student. She described the February 5, 2025 incident in which her 17-year-old son fell 30 feet during a school program, sustaining traumatic brain and spinal cord injuries and multiple life-threatening conditions.

- She explained that emergency surgery required removal of part of his skull to relieve brain swelling and that he spent months in the ICU followed by rehabilitation and now requires constant care. She described the emotional and financial toll on her family, including the impact on his twin brother and autistic sibling, and stated their lives have been permanently changed. She emphasized that what should have been a safe educational experience became a traumatic event.
- She explained that current statutes shield governmental entities with liability caps that would only cover a fraction of the costs already incurred and fail to account for lifelong care. She stated the bill is about accountability, fairness, and safety, not financial gain.
- Senator Altschiller asked when her family became aware of the liability cap issue.

- o Representative Grossman responded that it was a few months after the accident when a law firm informed them there was no viable case.
  - Senator Altschiller followed up asking by asking her to confirm that despite the severity of the injuries they were told there was no case.
    - o Representative Grossman confirmed that was correct.
      - Senator Altschiller asked for clarification on whether the bill eliminates or raises the cap.
        - o Representative Grossman confirmed it raises the cap.
- Senator Gannon asked what her son's projected lifetime care costs are likely to be.
  - o Representative Grossman stated her son currently requires 24/7 care but she has not calculated the total ongoing costs of his injuries.

**Kate Horgan** testified on behalf of the New Hampshire Association of Counties in opposition.

- She stated that slip-and-fall claims are the largest source of claims against counties and that counties operate high-risk services such as jails and nursing homes.
- She said litigation has increased in recent years and raised concerns that mandatory indemnification could increase claims because individuals would not bear financial responsibility.
- Senator Altschiller asked whether raising the cap would lead to more lawsuits.
  - o Kate Horgan responded that it may not increase the number of claims but would increase payouts and long-term costs to taxpayers.

**Barrett M. Christina** testified on behalf of the New Hampshire School Boards Association in opposition. He stated that increased liability exposure would require school districts to adopt risk-avoidance measures including additional training, inspections, and potentially limiting public access to school facilities, which serve as important community spaces.

- He discussed challenges with staff turnover, particularly among paraprofessionals and aides, and the difficulty of maintaining consistent and ongoing training across a constantly changing workforce.
- He noted that schools rely heavily on volunteers for activities such as field trips, athletics, and extracurricular programs, and that ensuring every individual meets a negligence-based standard of care would create additional administrative burdens, costs, and logistical challenges. He warned that the bill could shift priorities away from education and toward defensive administrative practices.
- He suggested possible amendments, including penalties for frivolous claims and revising causation language so that liability would require that an injury be a foreseeable result of a failure to meet the standard of care.
- Senator Abbas argued that in a case where basic safety protocols are ignored, such as failing to use a harness or proper equipment, a private entity would face full liability and questioned why schools should be treated differently.
  - Barrett Christina responded that governmental immunity exists to limit excessive litigation and recognize the unique public-service role of schools, while acknowledging that failures to follow basic safety procedures are serious.
    - Senator Abbas then presented a hypothetical involving lack of basic safety equipment and asked how that situation should be addressed.
      - Barrett Christina responded that the bill applies a simple negligence standard, which he believes may be too low, and suggested that lawmakers could consider a higher threshold such as gross negligence or willful misconduct.
- Senator Altschiller then challenged his earlier point about training, pressing whether workforce challenges or difficulty in training staff and volunteers should justify reduced accountability when safety failures occur.
  - Barrett Christina clarified that he was not suggesting that training difficulties excuse negligence or justify reduced accountability, but rather that in practice schools must manage real-world constraints including staffing shortages, turnover, and reliance on volunteers, and that imposing additional legal exposure tied to those realities could create operational strain.
  - He stated that training is necessary and should continue to be prioritized, but emphasized that the bill would layer additional legal risk onto an already complex system, which could lead districts to limit programs or access in order to manage that risk.

**Sarah Burke Cohen** testified on behalf of the New Hampshire Municipal Association in opposition. She explained that municipalities operate across a wide range of inherently high-risk activities, including roads, public buildings, emergency services, and other public-facing functions, and that the current statutory framework is designed to balance accountability with protecting taxpayers from excessive financial exposure.

- She stated that the bill would significantly increase liability exposure, insurance premiums, and litigation costs, which would ultimately be borne by taxpayers through higher property taxes or reduced municipal services.
- She emphasized that municipalities already take safety seriously and work to minimize risk, but that the proposed changes would alter how risk is managed by increasing legal and financial pressure.
- She explained that increasing liability caps and expanding the scope of claims would likely result in more claims being pursued, particularly because higher potential recoveries make litigation more viable.
- She stated that even weak or questionable claims may be settled early because it is often less expensive to settle than to litigate, especially when facing the risk of larger judgments.
- She also described how the bill could lead to multiple layers of litigation, including disputes over indemnification obligations, insurance coverage, and allocation of liability, all of which increase costs and administrative burden.
- She warned that municipalities may begin engaging in what she described as “defensive governing,” where decisions are driven by risk avoidance rather than public need, potentially resulting in fewer programs, reduced public access to facilities, delays in infrastructure projects, or hesitation to undertake certain initiatives altogether.
- Senator Gannon challenged her position by stating that increasing liability exposure should incentivize municipalities to improve safety practices and reduce negligence.
  - Sarah Burke Cohen responded that municipalities already prioritize safety and do not rely on liability caps as a reason to cut corners, and she maintained that increasing liability would not meaningfully change safety behavior but would increase costs.
- Senator Reardon argued that insurance markets already incentivize safety improvements through premiums and risk assessments, and questioned whether artificially low liability caps reduce incentives for municipalities to invest in safety.

- o Sarah Burke Cohen acknowledged that insurance carriers do play a role in encouraging safety practices, but she maintained that increasing statutory liability would still result in higher premiums and financial strain regardless of existing incentives, and that municipalities already operate under significant pressure to maintain safe conditions.
- Senator Altschiller raised a fairness question, asking why individuals who are seriously injured due to negligence should bear the financial burden instead of the municipality responsible.
  - o Sarah Burke Cohen responded that while the situation is difficult, expanding liability shifts costs broadly onto taxpayers, meaning that the financial burden is redistributed across the public rather than eliminated, and she emphasized that municipalities must balance individual cases against the overall fiscal impact on residents.
- Senator Abbas then asked directly what changes she would propose to address a case like the one described earlier involving severe injury and lack of recovery under current law.
  - o Sarah Burke Cohen declined to propose specific policy changes, stating that she represents municipalities and not school districts, and that she was not in a position to suggest legislative fixes for that specific type of case.

**Jonathan Melanson** testified on behalf of the New Hampshire Police Association in opposition. He stated that his primary concern with the bill relates to the indemnification provisions and the potential unintended consequences for law enforcement officers.

- He explained that while indemnification might appear to provide protection, the way the bill restructures liability could introduce legal uncertainty, particularly if portions of the statute are challenged in court.
- He raised concerns about potential conflicts with Article 28-a of the New Hampshire Constitution, which prohibits unfunded mandates, suggesting that the bill could impose new financial obligations on municipalities without corresponding state funding.
- He explained that if those provisions were challenged and struck down, it could create ambiguity around what protections officers actually have, which in turn could affect decision-making in the field as well as broader issues like recruitment and retention.
- Senator Altschiller asked him to clarify how officers could lose protections under the bill and requested a concrete example rather than a general concern.

- o Jonathan Melanson responded that the concern is not tied to a single specific scenario but rather to the possibility that if indemnification language is legally challenged and altered or invalidated, it could create gaps or uncertainty in how and when officers are protected for actions taken within the scope of their duties.
  - Senator Altschiller then pressed further, asking whether this concern depends on a chain of hypothetical legal outcomes rather than a direct and immediate effect of the bill.
    - o He acknowledged that there is some level of uncertainty and that his concern is forward-looking, based on how courts might interpret or respond to the statutory changes, and stated that he would follow up with additional legal clarification if needed.
- Senator Abbas asked why mandatory indemnification would not be viewed as a benefit to officers, since it appears to guarantee that municipalities would cover liability for actions taken within the scope of employment.
  - o Jonathan Melanson responded that while indemnification may seem beneficial on its face, members of the association are concerned about how the broader restructuring of liability law could interact with that provision, particularly if legal challenges create instability or unintended gaps. He emphasized that officers value clarity and certainty in legal protections, and that introducing new statutory language with potential constitutional or legal questions could undermine that certainty rather than strengthen it.
  - o He reiterated that the association's concern is not with the intent of the bill but with the possible unintended consequences and legal uncertainty it could create for law enforcement personnel.

**Bob Blaisdell** testified on behalf of the New Hampshire State Employees Association in opposition.

- He emphasized that the bill is not simply an adjustment to liability caps but represents a significant restructuring of RSA 507-B:2 and the broader statutory framework governing liability for political subdivisions.
- He walked through prior legislative history, referencing changes made in 2007, 2016, and 2018, and explained that those efforts were incremental, carefully negotiated, and intended to maintain a balance between accountability and protecting public resources. He contrasted those efforts with the current bill, which he described as a more sweeping change that shifts the framework

toward a general negligence standard rather than the current system that allows only specific categories of claims.

- He argued that this change would allow more cases to enter the court system, even if they are ultimately dismissed, increasing litigation costs, administrative burden, and pressure on public employers.
- He stressed that statutory structure is critical and that courts rely on clear legislative boundaries, and he cautioned against relying on case law alone to fill in gaps created by broad statutory changes.
- He recommended that the bill be sent to interim study for further examination rather than enacted in its current form.
- Senator Gannon asked about inflation and compared the proposed increases in liability caps to rising costs in other areas, like pizza, suggesting that adjustments may be necessary over time.
  - Bob Blaisdell responded that the proposed increases represent roughly 42 to 46 percent, which he characterized as significantly larger than past adjustments and not consistent with the more gradual approach the legislature has historically taken.
  - He reiterated that the scale and scope of the changes, rather than just the cap increase itself, are what raise the most concern.

**David Lovlien**, the Merrimack County Commissioner testified in opposition.

- He stated that he is concerned about the bill's significant and unpredictable fiscal impact on county government, specifically noting that the proposal raises the liability cap from \$325,000 to \$475,000 per claimant, which he described as a 46 percent increase.
- He said this increase would very likely drive up insurance premiums, costs that are ultimately borne by taxpayers.
- He added that insurance costs have already risen sharply, noting that Merrimack County's health insurance costs increased by over 20 percent in the past year, and stated that the possibility of another increase in liability-related insurance makes him concerned about his responsibility to taxpayers.
- He referenced that the New Hampshire Association of Counties has described the fiscal impact as indeterminable, which he said adds to the concern because counties must budget responsibly and open-ended exposure to increased claims and premiums makes planning difficult and threatens budget stability.

- Senator Gannon asked a question referencing inflation and rising costs, stating that over time costs have increased significantly and suggesting that a roughly 6 percent annual increase does not seem unreasonable given rising medical expenses, and asked whether he knew the cost of living increase over the last eight years.
  - Commissioner Lovlien responded that he did not know the specific figure, and the questioner noted they also did not know but believed it to be in that general range.
- Senator Altschiller asked him to confirm that his opposition is based on his role as a county commissioner responsible for managing budgets and representing taxpayers, and then asked how he balances that role with representing residents who may be seriously injured due to the negligence of a county employee. The question specifically asked whether those individuals deserve the same level of attention and protection as taxpayers generally.
  - Commissioner Lovlien responded that counties are not escaping accountability, explaining that counties are subject to lawsuits, do settle claims, and do pay large judgments. He stated that the purpose of the liability cap is to protect taxpayers from catastrophic and unpredictable liability that could devastate public budgets, noting that Merrimack County has approximately 150,000 residents and that large payouts affect all of them. He stated that accountability and fiscal sustainability are not mutually exclusive.
- Senator Reardon noted that counties routinely train employees and attempt to identify and reduce risk, but pointed out that counties have also faced lawsuits that fall outside the statutory framework and still pay or settle those claims. She then asked where the incentive exists for counties to continue investing in training and risk reduction if the legislature provides a liability cap that limits exposure.
  - Commissioner Lovlien responded that the primary incentive for training is to ensure the safety of employees and the public at county facilities, stating that safety itself is the main driver.
  - He added that there is also a financial incentive, noting that even the existing cap of \$375,000 represents a significant amount of money, and stated that counties are motivated both by moral responsibility and financial considerations to maintain safe operations.

**Nicholas Kline** testified on behalf of the New Hampshire Association for Justice in support. He introduced himself as an attorney with Shaheen and Gordon in Dover.

- He addressed the issue of the liability cap, noting that the last update was in 2018, and explained that the longer the cap goes without being modified, the less deterrent effect it has on negligent conduct and the less meaningful recovery becomes for injured parties.
- He stated that as time passes without adjustment, the statute becomes less effective. He also emphasized that claims that actually reach the cap are relatively rare, explaining that the vast majority of cases against municipalities are not cap-level claims, and that increasing the cap primarily affects the most serious cases involving significant damages, making recovery more meaningful in those instances.
- He then explained the structural change in the bill regarding claim types, stating that under RSA 507-B as it currently exists, all claims against municipalities are prohibited except for those specifically allowed, which are generally premises liability claims and motor vehicle claims.
- He explained that the bill reverses that framework so that claims are allowed unless they are specifically prohibited. He stated that this change aligns municipal liability with RSA 541-B, which governs claims against the state, and creates consistency between the two systems.
- He emphasized that this change would not open the floodgates to a large number of new claims, but rather would allow certain legitimate claims that currently cannot be brought because they do not fit neatly into the narrow existing categories.
- He gave the example of a case like Oscar's involving fall protection and ladder safety, explaining that such a claim would not be something that would be explicitly enumerated under the current statute and therefore would be barred, but under the proposed change would be allowed.
- Senator Reardon asked a question seeking clarification about how the current statute operates, specifically asking whether an injury must occur at a municipal-owned facility or involve a municipal vehicle in order to qualify under the current law. The question included a hypothetical asking whether, if the incident occurred on a city street near a telephone pole with supervision involved, that would remove it from the allowable claim categories.
  - o Nicholas Kline responded that the question relates to how the statute is currently written and explained that the only claims currently allowed are those arising out of the operation of premises, typically things like slip-and-fall cases, and motor vehicle-related claims, such as car accidents. He stated that under a plain reading of the statute, a claim like the one described in earlier testimony would be prohibited and there would be no way to bring that claim.

- o He then added that even if the bill passes, municipalities would still have numerous forms of immunity available, including recreational use immunity, legislative immunity, immunity for volunteers acting on behalf of municipalities, fire and rescue immunity, and sovereign immunity protections for police officers.
- o He emphasized that the bill does not eliminate these protections and that changing RSA 507-B would allow specific types of claims like the one discussed, rather than opening municipalities to unlimited liability.
- Senator Abbas then asked a follow-up question about premises liability, stating their understanding that if a student were participating in a school program but the activity occurred off school property, such as building a structure on private property as part of a class, premises liability would not apply and the claim would therefore be barred under current law.
  - o Nicholas Kline responded that under the current statute that understanding is correct and that such a claim would not be allowed, and that the proposed change in the bill would allow that type of claim to proceed. He concluded by offering to answer additional questions. No further questions were asked.

**Leslie Nixon** testified in support and stated that she had not originally intended to speak but felt compelled after hearing prior testimony. She identified herself as a lawyer, a resident of New Boston, and a taxpayer, noting that she has also represented her town in legal matters.

- She addressed a suggestion raised earlier about limiting frivolous lawsuits or requiring attorney’s fees in such cases, explaining that this is already part of existing law and citing her own experience representing her town in a case where they prevailed and recovered attorney’s fees.
- She then shifted to speaking as a parent, explaining that when families entrust their children to schools or other caregivers, they are placing something deeply valuable in their care. She shared that she had personally experienced the loss of a child who had been in a private school 22 years earlier, and that her family had the legal right to bring a claim against that school and did so.
- She argued that the same legal rights should be available to families whose children are in public schools, emphasizing that the level of trust and responsibility is the same regardless of whether a child is in a public or private setting.