

# Senate Judiciary Committee

*Brendan Bunnell 271-4063*

**HB 1788-FN**, holding state contracts with DEI provisions to be void as a matter of law and establishing a right of action for citizens where public entities or state agencies engage with contracts with DEI provisions.

**Hearing Date:** April 2, 2026

**Time Opened:** 3:53 p.m.

**Time Closed:** 4:45 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. Requires courts to find that contracts that include DEI-related provisions are void as a matter of law.

II. Allows citizens to sue public entities or state agencies for engaging in, or failing to investigate allegations of, contracts with DEI-related provisions.

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**Sponsors:**

Rep. Nalevanko

Rep. DeRoy

Rep. Wherry

Rep. Sweeney

Rep. Cambrils

Rep. Berry

Sen. Ward

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**Who supports the bill:** Representative Liz Barbour, Representative Rich Nalevanko, Representative Daniel Popovici-Muller, Lori Korzen, Cory Stone, Curtis Howland, Senator Ruth Ward, Eric Pauer, Pamela Harders, and Dan Richardson.

**Who opposes the bill:** 275 Individuals signed in opposition of this bill. For a complete list of those who signed in opposition please contact the Senate Judiciary Committee Aide.

**Who is neutral on the bill:** Sean Locke (NH DOJ)

**Summary of the testimony presented:**

**Representative Rich Nalevanko** testified as the prime sponsor of the bill.

- He explained the bill adds clarifying language to RSA 21-I:12 to better define what is included and excluded, amends RSA 21-I:114 to void contracts that violate the subdivision and require courts to order full rescission, and creates a new enforcement mechanism allowing any citizen to bring a cause of action against public entities for violations, with eligibility for injunctive relief and attorney's fees.
- He stated this engages taxpayers in enforcement and described it as a good governance measure intended to ensure compliance with existing law.
- A senator asked whether the law has been in effect long enough to show violations. Representative Nalevanko responded that parts of the law are currently being litigated, particularly provisions from HB2, and that while some institutions like the University of New Hampshire have taken visible steps such as removing DEI language and renaming departments, he believes these changes are often cosmetic. He stated constituents still report ongoing DEI presence and emphasized the need to comply with both the letter and spirit of the law.
- Senator Reardon asked whether voiding contracts could incentivize renegotiating below-market agreements.
  - Representative Nalevanko responded by questioning whether the example was hypothetical and stated that compliance could first be achieved by modifying contract language rather than voiding entire agreements.
    - Senator Reardon asked about severability concerns and noted the bill says contracts are void.
      - Representative Nalevanko acknowledged that contracts could be void and described it as an opportunity to address compliance issues.
- Senator Abbas asked whether the legislature has authority to require courts to rescind contracts, raising separation of powers concerns.
  - Representative Nalevanko responded that while he is not a lawyer, he believes the legislature has authority to clarify intent in law and that the provision serves to define legislative intent rather than interfere with judicial authority.
- Senator Altschiller asked whether prior court rulings finding similar provisions unconstitutional implied courts were incompetent.
  - Representative Nalevanko responded that he was not asserting that and stated that evolving legal circumstances and ongoing national developments may lead to different outcomes in current litigation.

- Senator Altschiller asked why the bill applies to the university system.
  - Representative Nalevanko responded that existing law already applies to all state agencies, including the university system, as well as local governments.
- Senator Altschiller asked about conflicts with federal disability laws and prior litigation concerns.
  - Representative Nalevanko responded that the bill clarifies definitions and argued that federal ADA protections already address disability-related issues separately.
- Senator Altschiller asked whether the bill gives any citizen standing to sue municipalities over DEI-related matters.
  - Representative Nalevanko responded that claims must not be frivolous and should first be brought to relevant authorities, but acknowledged the bill gives citizens standing to act if enforcement agencies fail to respond, emphasizing this empowers public oversight.

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

- She stated the bill allows “any citizen” to bring action without limiting it to New Hampshire residents, raising concern that out-of-state individuals could initiate litigation.
- She explained that counties must comply with federal requirements, including training related to religion in nursing homes, and warned the bill could create conflicts where federally required practices are challenged as DEI violations, placing counties in an impossible position.
- Senator Gannon commented that “citizen” may be defined elsewhere.
  - Kate Horgan responded that the definition is not consistently applied and expressed concern about ambiguity.

**Sarah Burke Cohen** testified on behalf of the New Hampshire Municipal Association in opposition.

- She explained that “citizen” is not defined in the municipal context, potentially allowing broad standing to sue municipalities, increasing legal costs.

- She raised concerns about contract rescission creating uncertainty, potential breach of contract litigation, vendor withdrawal, and increased administrative burdens from reviewing contracts and policies.
- She emphasized financial and operational risks to municipalities.

**Representative Timothy Horrigan** testified in opposition.

- He stated his constituents support DEI and that the underlying law is likely unconstitutional.
- He argued the bill attacks principles such as free expression, disability rights, and fairness.
- He described DEI as promoting diversity, equity, and inclusion, which he characterized as positive values.
- He suggested repealing the underlying provisions entirely rather than modifying them.

**Senior Assistant Attorney General Sean Locke** provided neutral technical testimony.

- He explained that portions of the underlying law are currently enjoined by a federal court and cannot be enforced.
- He warned the bill would create a “second front” of litigation by allowing citizens to sue while the state is already defending the law.
- He described risks of conflicting legal obligations, increased litigation complexity, and municipalities being caught between citizens and contractors.
- He also highlighted that awarding attorney’s fees increases financial exposure and that expanding standing beyond traditional taxpayer standing is not recognized by the New Hampshire Supreme Court.
- He clarified the bill does not require citizens to seek administrative remedies before going to court.
- Senator Abbas asked about separation of powers concerns.
  - Sean Locke responded that requiring courts to void contracts limits judicial discretion and may interfere with existing remedies.

- Senator Altschiller asked whether the bill allows anyone to file suit without prior steps.
  - Sean Locke responded that the bill does not require any pre-litigation process and allows direct court action.
- Senator Altschiller asked whether there are any required alternative procedures before litigation.
  - Sean Locke responded that there are none in the statute.

**Representative Wayne Burton** testified in opposition. He argued the bill is unconstitutional and referenced a federal court ruling criticizing similar laws.

- He stated the bill could effectively eliminate special education by conflicting with federal requirements under IDEA, including identifying students with disabilities.
- He described prior legislative efforts and litigation showing that such provisions would interfere with special education and urged rejection unless exemptions are added.

**Deborah Howes** testified on behalf of the American Federation for Teachers New Hampshire in opposition.

- She stated the bill harms students and educators, expands provisions already ruled unconstitutional, and creates uncertainty that may deter schools from providing necessary services.
- She warned it could impact special education, English language learners, and teaching of accurate history.
- She emphasized increased litigation risks and chilling effects on educators.
- Senator Altschiller asked whether the law is enjoined nationwide.
  - Deborah Howes responded that it is enjoined beyond New Hampshire, including broader federal rulings.

**Rachel Potter** testified for the ACLU of New Hampshire in opposition. She stated the bill expands provisions already ruled unconstitutional, ignores court rulings, and increases penalties.

- She cited findings that prior laws were vague and arbitrarily enforced and argued the bill worsens those issues, leading to more litigation and uncertainty.

**Brian Hawkins** testified for NEA New Hampshire in opposition.

- He stated the bill adds penalties to an already vague law and specifically targets educators by tying violations to the educator code of conduct.
- He warned this could harm teacher retention and create fear in teaching controversial topics.
- Senator Abbas asked how contract violations relate to educator discipline.
  - Brian Hawkins responded that the bill links violations to the educator code of conduct but acknowledged uncertainty in how that would apply in practice and noted it introduces ambiguity into enforcement.

**Elizabeth Brown** testified as General Counsel for the Department of Education.

- She explained that enforcement could fall on individuals who sign contracts, such as superintendents or principals, since educators are licensed rather than institutions.
- She highlighted that the bill allows lawsuits against the Department of Education by any citizen, not limited by residency.
- She warned the department lacks staffing to investigate complaints as required and could be sued for failing to investigate due to limited resources.
- She emphasized financial and operational burdens and lack of clarity in implementation.