

Senate Judiciary Committee

Pete Mulvey 271-4063

HB 687-FN, relative to class action settlements and consent decrees.

Hearing Date: April 24, 2025

Time Opened: 1:59 p.m.

Time Closed: 2:17 p.m.

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

Members of the Committee Absent : None

Bill Analysis: This bill provides that any money that can ultimately not be distributed to the class in a class action suit is escheated to the state general fund, and a court may not modify the judgment or apply the doctrine of cy pres to avoid that result. This bill also limits certain attorneys' fees to a certain rate unless a court determines otherwise.

Sponsors:

Rep. Corcoran

Rep. Belcher

Rep. Berry

Rep. Granger

Who supports the bill: Rep. Travis Corcoran.

Who opposes the bill: Tony Sculimbrene, Marissa Chase, Rep. Timothy Horrigan, and Janet Lucas.

Who is neutral on the bill: N/A.

Summary of testimony:

Representative Travis Corcoran

Hillsborough – District 28

- HB 687 related to class action lawsuits.
- HB 687 dealt with what Rep. Corcoran referred to as the ‘sue and settle’ process.
- Rep. Corcoran described the ‘sue and settle’ process; First, a suit is brought against the government, or a government entity, which then issues a consent decree to settle the claim.
- Rep. Corcoran said that attorneys will look for an issue, and then build a class of plaintiffs around said issue.

- In instances where the cost to administer a settlement to plaintiffs exceeded the fund itself, or where there are leftover monies, the cy pres doctrine is deferred to, where an alternative charitable function is paid on behalf of the plaintiffs.
- HB 687 required that any undistributed funds from a class action lawsuit in New Hampshire be redistributed to the State General Fund.
- HB 687 further provided a cap on attorney's fees for class action lawsuits in the State of New Hampshire.
- Sen. Abbas asked why HB 687 directed class action funds to the government despite the government not being the injured party.
 - Rep. Corcoran said that the primary goal of the legislation was to ensure that funds went to injured parties. Rep. Corcoran said that HB 687 dealt with instances where money did not go to injured parties and was diverted via cy pres.
 - Rep. Corcoran added that it made sense to reinsert funds in the general fund as opposed to a non-governmental organization if plaintiffs cannot be reached or identified.
- Sen. Abbas asked why the State would keep excess funds.
 - Rep. Corcoran said HB 687 encouraged funds to be given to class members. If the injured plaintiffs had not been identified, or the payout was less than the amount to distribute, then funds would be left to the State as opposed to an NGO.
- Sen. Abbas asked again why the government, who is not the injured party, deserved the money.
 - Rep. Corcoran countered by contemplating why an NGO, who are also uninjured, deserved the funds over the Government, which represented and served all people.
- Sen. Gannon asked why funds couldn't be split between the few plaintiffs that are identified.
 - Rep. Corcoran clarified that HB 687 would not preclude that.
- Sen. Altschiller asked when HB 687 would kick in.
 - Rep. Corcoran said the bill would be effective June 1st of 2026.
- Sen. Altschiller clarified her question and asked at what point amid a settlement would funds be redirected.
 - Rep. Corcoran indicated that HB 687s' redirection of funds would occur similarly to the ongoing cy pres process and said that the bill deferred to the court's current policies and guidelines governing such.
- Sen. Abbas asked Rep. Corcoran if cy pres distributions were part of the settlement process and agreed to ahead of time.
 - Rep. Corcoran emphasized that HB 687 limited a court's ability to elect the Sierra Club, or National Rifle Association as a cy pres beneficiary.
- Sen. Abbas believed that HB 687 may frustrate some settlements, as they may identify and agree to a certain party as a cy pres beneficiary due to a relationship with the injured parties of the suit. Sen. Abbas questioned directing funds to the government in such a scenario.
 - Rep. Corcoran conceded that the bill is intended to frustrate certain settlements which are expressly intended to direct funds to an NGO.

Tony Sculimbrene

Attorney, Gill and Sculimbrene

- Mr. Sculimbrene testified in opposition to the bill.
- Mr. Sculimbrene stated that very few lawsuits in New Hampshire were class action suits. Class action cases are largely federal cases subject to complex rules and case law regarding standards for initiation and paying out settlements.

- The number of cases involving class action claims and disbursements to NGOs in New Hampshire courts is largely nonexistent according to Mr. Sculimbrene.
- Passage of HB 687 would incentivize more cases to be brought in federal, as opposed to state court, ultimately diluting local input.
- Sen. Abbas asked Mr. Sculimbrene if he was an attorney.
 - Mr. Sculimbrene said he was.
- Sen. Abbas asked if he had worked on class action lawsuits in his career.
 - Mr. Sculimbrene said that he had worked with the class action suit against St. Gobain Performance Plastics.
- Sen. Abbas asked for his thoughts on HB 687 and its potential disruption to settlements.
 - Mr. Sculimbrene suggested that HB 687 was modifying State Statute in response to a select group of attorneys' tactics in federal court. Mr. Sculimbrene believed that HB 687 would create more problems in its wake.
- Sen. Abbas said his concern was that settlements may be stalled if what would typically be agreed to as a contingency distribution would be effectively sidelined by the requirement to distribute those funds to the government.
 - Mr. Sculimbrene referred to a settlement surrounding claims of sexual abuse and misconduct at Dartmouth College. There were excess funds in the settlement, which was common according to Mr. Sculimbrene given the difficulty in identifying all injured parties. There would always be some leftover settlement, and Mr. Sculimbrene found it strange to direct that remainder to the State, an entity which had nothing to do with the original proceeding.
- Sen. Abbas suggested that a third-party beneficiary may be less objectionable than the state general fund.
 - Mr. Sculimbrene agreed and stated that attorneys picked an entity acceptable to the class members and clients which was preferable to the independent, and unrelated government.

PM
Date Hearing Report completed: April 29, 2025