

# Bill as Introduced

HB 375 - AS INTRODUCED

2011 SESSION

11-0427  
04/05

HOUSE BILL

**375**

AN ACT

relative to immunity for school personnel using necessary force to protect pupils.

SPONSORS:

Rep. D. McGuire, Merr 8; Rep. Oligny, Rock 8; Rep. Sorg, Graf 3; Rep. Gidge, Hills 24

COMMITTEE:

Judiciary

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ANALYSIS

This bill provides civil and criminal immunity for good faith acts or omissions performed by teachers or persons otherwise entrusted with the care or supervision of a pupil.

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Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT relative to immunity for school personnel using necessary force to protect pupils.

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

1       1 Physical Force by Persons with Special Responsibilities. Amend RSA 627:6, II to read as  
2 follows:

3           II.(a) A teacher or person otherwise entrusted with the care or supervision of a ~~[minor for~~  
4 ~~special purposes]~~ **pupil** is justified on ~~[the premises]~~ **school grounds** in using necessary force  
5 against any such ~~[minor]~~ **pupil**, when the ~~[minor]~~ **pupil** creates a disturbance, or refuses to leave  
6 the premises, or when it is necessary for the maintenance of discipline. ***A teacher or person***  
7 ***otherwise entrusted with the care or supervision of a pupil shall be immune from any civil***  
8 ***or criminal liability for any act or omission performed in good faith and in accordance***  
9 ***with this paragraph.***

10           (b) In a child care program licensed or exempt from licensure under RSA 170-E,  
11 necessary force shall be limited to the minimum physical contact necessary to protect the child, other  
12 children present, the staff, or the general public from harm.

13       2 Effective Date. This act shall take effect August 1, 2011.

HB 375 - AS AMENDED BY THE HOUSE

23Feb2011... 0157h  
30Mar2011... 1128h

2011 SESSION

11-0427  
04/05

HOUSE BILL           **375**

AN ACT           relative to immunity for school personnel using reasonable force to protect a minor for special purposes or pupil.

SPONSORS:       Rep. D. McGuire, Merr 8; Rep. Oigny, Rock 8; Rep. Sorg, Graf 3; Rep. Gidge, Hills 24

COMMITTEE:      Judiciary

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AMENDED ANALYSIS

This bill provides civil and criminal immunity for good faith acts or omissions performed by teachers or persons otherwise entrusted with the care or supervision of a minor for special purposes or pupil.

.....

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                  Matter removed from current law appears ~~[in brackets and struck through.]~~  
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3           II.(a) A teacher or person otherwise entrusted with the care or supervision of a minor for  
4 special purposes *or pupil* is justified [~~on the premises~~] ***during the care and supervision of the***  
5 ***minor or pupil*** in using [~~necessary~~] ***reasonable*** force against any such minor *or pupil*, when the  
6 minor *or pupil* creates a disturbance, or refuses to leave the premises, or when it is necessary for  
7 the maintenance of discipline. ***A teacher or person otherwise entrusted with the care or***  
8 ***supervision of such minor or pupil shall be immune from any civil or criminal liability for***  
9 ***any act or omission performed in good faith and in accordance with this paragraph.***

10           (b) In a child care program licensed or exempt from licensure under RSA 170-E,  
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13       2 Effective Date. This act shall take effect August 1, 2011.

HB 375 - AS AMENDED BY THE SENATE

23Feb2011... 0157h  
30Mar2011... 1128h  
06/01/11 2218s  
06/01/11 2271s

2011 SESSION

11-0427  
04/05

HOUSE BILL           **375**

AN ACT           relative to immunity for school personnel using reasonable force to protect a minor for special purposes or pupil.

SPONSORS:       Rep. D. McGuire, Merr 8; Rep. Oigny, Rock 8; Rep. Sorg, Graf 3; Rep. Gidge, Hills 24

COMMITTEE:      Judiciary

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AMENDED ANALYSIS

This bill permits a teacher or other person entrusted with the care or supervision of a minor or pupil to use reasonable force to end a disturbance, to maintain safety, or to remove the pupil or minor from the premises under certain circumstances.

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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.

HB 375 - AS AMENDED BY THE SENATE

23Feb2011... 0157h  
30Mar2011... 1128h  
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11-0427  
04/05

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT                   relative to immunity for school personnel using reasonable force to protect a minor  
for special purposes or pupil.

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

1           1 Physical Force by Persons with Special Responsibilities. RSA 627:6, II(a) is repealed and  
2 reenacted to read as follows:

3                   (a) A teacher or person otherwise entrusted with the care or supervision of a minor for  
4 special purposes or pupil may use reasonable force against any such minor or pupil when and to the  
5 extent that he or she may reasonably believe it necessary to end a disturbance, to maintain decorum  
6 or safety, or to remove such minor or pupil from the premises when the minor's or pupil's behavior or  
7 continued presence on the premises would constitute a danger to that individual, or to other children  
8 or adults present. Conduct which is justifiable under this subparagraph constitutes a defense to any  
9 offense. The fact that such conduct is justifiable shall constitute a complete defense to any civil  
10 action based on such conduct.

11           2 Effective Date. This act shall take effect August 1, 2011.

# Amendments





Amendment to HB 375

1 Amend section 1 of the bill by replacing it with the following:

2

3 1 Physical Force by Persons with Special Responsibilities. RSA 627:6, II(a) is repealed and  
4 reenacted to read as follows:

5 (a) A teacher or person otherwise entrusted with the care or supervision of a minor for  
6 special purposes or pupil may use reasonable force against any such minor or pupil when and to the  
7 extent that he or she may reasonably believe it necessary, to end a disturbance, to maintain decorum  
8 or safety, or to remove such minor or pupil from the premises. Conduct which is justifiable under  
9 this subparagraph constitutes a defense to any offense. The fact that such conduct is justifiable shall  
10 constitute a complete defense to any civil action based on such conduct.



2011-2218s

AMENDED ANALYSIS

This bill permits a teacher or other person entrusted with the care or supervision of a minor or pupil to use reasonable force to end a disturbance, to maintain safety, or to remove the pupil or minor from the premises.

# Committee Minutes

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**SENATE CALENDAR NOTICE  
JUDICIARY**

Senator Matthew Houde Chairman  
 Senator Sharon Carson V Chairman  
 Senator Fenton Groen  
 Senator Jim Luther

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

**Date: April 27, 2011**

**HEARINGS**

**Thursday**

**5/5/2011**

JUDICIARY

LOB 101

1:00 PM

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

**Comments:** HB 313 at 1:45 p.m. is the continuation of the hearing that was recessed on April 21, 2011.

1:00 PM	HB375	(2nd New Title) relative to immunity for school personnel using reasonable force to protect a minor for special purposes or pupil.
1:15 PM	HB131	relative to indemnification of volunteers performing duties in the state park system.
1:30 PM	HB532-L	relative to municipal liability for dog bites.
1:45 PM	HB313	requiring parental consent for court referral of a minor to a juvenile diversion program.

**Sponsors:**

**HB375**

Rep. Dan McGuire

Rep. Jeffrey Oligny

Rep. Gregory Sorg

Rep. Kenneth Gidge

**HB131**

Rep. Peter Bolster

Sen. Bob Odell

Rep. D.L. Chris Christensen

Rep. Jeffrey St. Cyr

**HB532-L**

Rep. Phil Greazzo

**HB313**

Rep. Tony Soltani

Susan Duncan 271-8631

Sen. Matthew Houde

Chairman

# Judiciary Committee

## Hearing Report

**TO:** Members of the Senate

**FROM:** Danielle Barker, Legislative Aide

**RE:** Hearing report on HB 375 – (2nd New Title) relative to immunity for school personnel using reasonable force to protect a minor for special purposes or pupil.

**HEARING DATE:** May 5, 2011

**MEMBERS OF THE COMMITTEE PRESENT:** Sen. Houde, Sen. Carson, Sen. Groen and Sen. Luther

**MEMBERS OF THE COMMITTEE ABSENT:** No one

**Sponsor(s):** Rep. D. McGuire, Merr 8; Rep. Oigny, Rock 8; Rep. Sorg, Graf 3; Rep. Gidge, Hills 24

**What the bill does:** This bill provides civil and criminal immunity for good faith acts or omissions performed by teachers or persons otherwise entrusted with the care or supervision of a minor for special purposes or pupil.

**Who supports the bill:** Rep. McGuire, Rep. Gidge, Rep. Soltani, Rep. DeLemus, Dean Michener representing the New Hampshire School Board Association and Robert Sherman

**Who opposes the bill:** Patricia Victorin, Michael Skibbie representing the Disabilities Rights Center, John Richards representing the Governor's Commission on Disability, Claire Ebel representing the New Hampshire Civil Liberties Union and Bonnie Dunham

### Summary of testimony received:

Senator Houde opened the public hearing on House Bill 375 and recognized Representative McGuire to introduce the bill.

Representative McGuire, the prime sponsor, explained to the Committee if someone were to physically interfere with a person they would be arrested, but there are some exceptions to that law. He stated one of the exceptions to that law is for school personnel to use "necessary" force when trying to

protect themselves or a minor. He stated the problem is there is no definition for necessary. Therefore, what does necessary really mean. Typically, the court will determine what necessary means if a situation goes that far. He believes someone who is in a situation where they have to use necessary force will always have in the back of their mind the threat of a lawsuit. He feels the current law may prevent school personnel from taking action to protect others. His bill changes the standard from "necessary" to "reasonable," and adds explicit immunity for those who act reasonably.

Senator Houde recognized John Richards to speak.

Mr. Richards is opposed to the bill. He represents the Governor's Commission on Disability. His biggest concern is that the bill does not address people with disabilities. For example, what if a teacher is dealing with a child who is deaf and the teacher asks the child to sit down and the child does not; does this bill offer that teacher the ability to physically force that child to sit down? He is concerned there is no definition for reasonable. He said there will always be a difference in the interpretation of that type of language. His other concerns include allowing teachers to use force to keep an unruly class quiet, the definition of a good faith effort, that there are no options for a parent whose child has been hurt, and lastly, the training, or lack thereof, for school personnel in regard to using reasonable force.

Senator Houde asked Mr. Richards if his objection was to changing the current law.

Mr. Richards replied yes. He fears this bill goes too far.

Senator Luther asked if Mr. Richards had any language suggestions to address his concerns.

Mr. Richards stated he was not sure what language would work.

Senator Luther stated there are a lot of teachers being injured by students and asked Mr. Richards how he would respond to teachers getting hurt.

Mr. Richards stated that is a concern and he wanted to know what behavior management programs and restraint techniques teachers are taught.

Senator Groen asked what teachers are supposed to do if students act up against each other and the teacher feels they need to restrain or stop the fight.

Mr. Richards replied if someone is getting hurt then restraint is necessary, but the language in the bill was broad enough to allow someone to hit a child. Senator Groen asked Mr. Richards if he saw using physical force as proper to maintain general classroom order.

Mr. Richards stated he hoped teachers were more capable than resorting to physical force.

Senator Houde recognized Bonnie Dunham to speak.

Ms. Dunham is opposed to the bill. She said she hoped this bill is well-intended, but she feels it is dangerous. She stated this could turn minor incidents into kids getting seriously hurt. She stated the language allows for a janitor, lunchroom employee, parent or recess monitor to use reasonable force on a child. She stated it does not refer to any follow-up that has to occur after force is used either. She asked the Committee why resorting to violence to control a child was necessary. She wanted to know why force would be used when no one is in danger. She stated use of the program Positive Behavioral Intervention and Supports has cut down on dropout rates, lowered truancy and increased test scores. She believes this should be used because violence does not work on children. She told the Committee every year students die at the hands of educators. She feels this bill could lead to more deaths and that the current standard is working. She believes this bill is looking for trouble.

Senator Houde recognized Patricia Victorin to speak.

Ms. Victorin is opposed to the bill. She said this bill has no protection for children. She referred to testimony given in the House by Laura Haney who used the word "protection". Ms. Victorin said if this bill were talking about protection she would not have a problem with it, but it is not talking about protection. The schools have protections as it stands now. She suggests school administrations need more education on current laws to fully understand what protections and rights they have. She said under this bill a child with Tourettes Syndrome could be hit because of their disability. She said while that sounds extreme, it would be legal. She asked the Committee who would determine what actions are made in good faith. Discipline and control are two separate issues. She told the Committee children with Individual Education Plans are not protected under this law, and usually only adults who work with the child know of those circumstances. Therefore, when that child goes into the lunchroom a person who does not work with the child would have the right to use force against the child and not have any knowledge of their extenuating circumstances. She stated if a scared child was hiding under a table would it be reasonable to drag them out, probably, but it would not be necessary. She believes the use of corporal punishment in schools under the guise of maintaining control is wrong because it is child abuse.

Senator Houde recognized Bob Sherman to speak.

Mr. Sherman is in favor of the bill. He is a retired teacher and is a teachers' union president. He referred to the change in the bill from "minors" to "pupils". He believes this is a good change because schools are required to educate students up to the age of 21, and in current law they technically cannot touch anyone over 18. He stated teachers do not always know who is a minor and who is not. He is also concerned about females fighting in school and what lawsuits can come if a male teacher tries to break up a fight between two females. He told the Committee if a complaint of excessive force is made the school administration conducts an investigation. He stated teachers are taught how to restrain students without excessive force. He also thinks the addition of the ability to use restraint off school premises is important because schools take field trips and conduct activities off school grounds.

Senator Luther asked if the level of attention and discipline has gone down in schools.

Mr. Sherman replied that it has decreased.

Senator Houde recognized Representative Gidge to speak.

Representative Gidge is in favor of the bill. He said the days of the teacher threatening to call a student's parents and then the student behaving as a result of that threat are long gone. He told the Committee a veteran teacher of 25 years had transferred schools and one day in her new classroom the entire class was chanting and waving their hands just to annoy her. He stated she jokingly slapped one of the children on the hand as to put the student's hands down from waving and she was fired for this action. He told the Committee when he heard this he brought her to the union representative and they were told this happens all the time. He said every person he has talked to wants this bill. He closed his comments by stating this bill is needed because children should not be running the school and at this point they are because they know the school administration is afraid of them.

Senator Houde recognized Michael Skibbie to speak.

Mr. Skibbie is opposed to the bill. He represents the Disabilities Rights Center (DRC). He does not feel this bill is necessary. He said the DRC takes no stance on the change in the bill from "minor" to "pupil". He said there is no reason to confer immunity for the entire chapter, which this bill does. He feels teachers are not educated well enough on how they are protected. He feels the current law using "necessary" as the standard and the current child restraint laws work well. He asked if teachers would act differently under this bill and he argued this bill invites greater use of force. He said there is nothing that suggests the threshold for force should be lowered at this point in time.



Senator Groen asked if he had a problem with the change to reasonable.

Mr. Skibbie replied he does because he thinks it invites problems. He believes the current standard provides protection.

Senator Luther asked what comes under "necessary" for a minor who creates a disturbance in the classroom.

Mr. Skibbie answered he thinks unless there is a table that determines what actions are necessary to react to, then the law has to be abstract. He thinks there is a line between necessary and reasonable. He believes immunity will not prevent a student from threatening a lawsuit.

Senator Houde recognized Claire Ebel to speak.

Ms. Ebel is opposed to the bill. She represents the New Hampshire Civil Liberties Union. She is concerned about this bill and feels if the Committee feels there are problems with the current law then it should go into study first. She said she is concerned inserting the word pupil will bring this into the education statutes, but the current law is not an education law, it is under the criminal statutes. She suggests taking from lines 11 and 12 in the bill, "necessary force shall be limited to the minimum physical contact necessary to protect the child, other children present, the staff, or the general public from harm" and using that definition on line 5 or putting it at the beginning of the section would be beneficial. She thinks the word "necessary" or the word "reasonable", whichever were to be used, needs to be defined in law or there will continue to be problems.

With no one else wishing to speak Senator Houde closed the public hearing.

**Future Action:** The Committee took no action at this time.

DCB

[file: HB 0375 report]

Date: May 6, 2011

# Speakers







# Testimony

**RSA 627:1 General Rule.** – Conduct which is justifiable under this chapter constitutes a defense to any offense. The fact that such conduct is justifiable shall constitute a complete defense to any civil action based on such conduct.

**Excerpt of RSA 126-U:1 Definitions.** – In this chapter:

IV. "Restraint" means bodily physical restriction, mechanical devices, or any device that unreasonably limits freedom of movement. It includes mechanical restraint, physical restraint, and medication restraint used to control behavior in an emergency or any involuntary medication.

(a) "Medication restraint" occurs when a child is given medication involuntarily for the purpose of immediate control of the child's behavior.

(b) "Mechanical restraint" occurs when a physical device or devices are used to restrict the movement of a child or the movement or normal function of a portion of his or her body.

(c) "Physical restraint" occurs when a manual method is used to restrict a child's freedom of movement or normal access to his or her body.

(d) Restraint shall not include:

(1) Holding a child to calm or comfort the child, holding a child's hand or arm to escort the child safely from one area to another, or intervening in an ongoing assault or fight.

(2) Brief periods of physical restriction by person-to-person contact, without the aid of medication or mechanical restraints, accomplished with minimal force and designed either to prevent a child from completing an act that potentially would result in physical harm to himself or herself or to another person, or to remove a disruptive child who is unwilling to leave an area voluntarily.

(3) Physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, and supportive body bands, or other physical holding when necessary for routine physical examinations and tests or for orthopedic, surgical, and other similar medical treatment purposes, or when used to provide support for the achievement of functional body position or proper balance or to protect a person from falling out of bed, or to permit a child to participate in activities without the risk of physical harm.

(4) The use of seat belts, safety belts, or similar passenger restraints during the transportation of a child in a motor vehicle.

(5) The use of force by a person to defend himself or herself or a third person from what the actor reasonably believes to be the imminent use of unlawful force by a child, when the actor uses a degree of such force which he or she reasonably believes to be necessary for such purpose.

Good afternoon Senators. My name is Patricia Victorin and I want to begin by thanking you for this opportunity to address you today. I am here to speak in opposition to HB375 which, although entitled "AN ACT relative to immunity for school personnel using reasonable force to protect a minor for special purposes or pupil", contains no measure of protection for children whatsoever.

When this bill went before the House Judiciary Committee, Laura Hainey, President of AFT-NH (American Federation of Teachers - NH), submitted written testimony which states, in part, that "The number of physical assaults against school district personnel is alarming and has escalated.", and she implored the House to pass HB375 citing school district employees' need to be protected when they "use necessary and reasonable force to maintain order in the classroom."

RSA 627:6, II (a) already provided immunity to "a teacher or other person otherwise **entrusted with the care or supervision, of a minor for special purposes**" "using **necessary force**" when a child "creates a disturbance" "refuses to leave the premises" or "when it is necessary for the maintenance of discipline"

Perhaps the intent of this bill was to protect teachers from verbal and physical assault or physically aggressive or threatening behavior however this bill would not simply do that, rather it would provide blanket immunity for **any** school employee to use physical force against **any** child for virtually **any** reason.

**First**            HB375 proposes to broaden the children effected by this statute by including all "pupils", rather than only those minors with whom a school employee has an established academic or supervisory relationship or responsibility.

**Second**        By removing the word "necessary", whereby a school employee would only be provided immunity for the use of force **as absolute physical necessity or inevitability, and inserting "reasonable"**, making it acceptable for a teacher to take action "**fit and appropriate to the end in view**", such as maintaining discipline, this bill will permit any employee of a school to physically remove a child with Tourettes Syndrome from the presence of other students for simply creating a disturbance. While this supposition may seem extreme, it would be legal.

**Third**           Those individuals protected by this bill would be immune from **any** civil or criminal liability for **any act or omission performed in good faith**. This overly broad discretion provided to school employees would prevent such an employee from being held accountable for their actions, or inactions, and would eliminate my voice and violate my parental rights to decide when, if and how my child should be disciplined.



I am here today as a mother of a child with an individual education plan to compensate for his ADHD and OCD. Occasionally, when he is in an OCD spiral, he rocks back and forth in his seat and wrings his hands. His teachers will all tell you that he is not disrespectful or defiant, and he has never harmed himself or anyone else, however his behavior could certainly be viewed as "a disturbance" and an interruption of the "maintenance of discipline".

Although one may believe that children would be 'protected' by an IEP, the only members of the faculty who are typically aware of a child's special needs (which are not readily apparent to the casual observer) are those directly involved in their education. By including all "pupils" the bill eliminates the establishment of the relationship between the child and the school employee thereby subjecting that child to discipline at the hands of an adult with no knowledge of that child's special needs and capabilities. This would include personnel such as bus drivers lunchroom personnel and hall monitors, who, depending upon their level of education and training, may have little to no understanding, or tolerance, for that child's behaviors.

The language, as written, would subject my child, or a child with autism or Tourettes Syndrome for example, to physical intervention by any school employee merely for creating a "disturbance" which that child cannot control, even when the disturbance is not presenting a threat to anyone.

The use of force against a child who cannot control his or her behavior, and who poses no threat to himself or others, cannot be tolerated as it will damage that child far more than it protects other children from a perceived "disturbance".

My concern is not merely limited to children with disabilities. A school employee could grapple with a child who refuses to give up his cell phone or shove a child who won't take his seat and that child, and his parents, would simply have to accept it.

If a cafeteria employee physically forced a child the stay in line or to pick up his tray, or a hall monitor grabbed a child by his lapel and physically 'escorted' him to class, this bill would provide full civil and criminal immunity to that employee.

Necessary can be defined as something of **absolute physical necessity or inevitability**

Reasonable can be defined as **fit and appropriate to the end in view**

If your goal is a quiet and orderly library, and a child was hiding under a table, then you would be immune from civil or criminal penalties for dragging that child from under the table by “using **reasonable** force against and such minor or pupil, when the minor or pupil creates a disturbance”

However, if the proposed amendment fails, and a school employee is only justified in “using **necessary** force” then such force would be limited to that of only ‘absolute physical necessity’.

Perhaps the best and most clearly defined solution is to copy the language from RSA 627:6, II subparagraph (b): “necessary force shall be limited to the minimum physical contact necessary to protect the child, other children present, the staff, or the general public from harm.”

I have great admiration for those who dedicate themselves to teaching and otherwise caring for our children while they are at school, however just because my child has walked through the front door of a school, he has not surrendered his civil rights and I have not abdicated my parental rights or my responsibility to protect my child.

The use of corporal punishment as an educational tool cannot be allowed under the guise of protecting school employees from an unruly student - to do so would be to suspend the civil rights of ALL students.

Thank you for your time and consideration. I'd be happy to respond to your questions.

April 18, 2011

Re: HB 375

Senator Matthew Houde, Chair  
Senate Judiciary Committee  
Legislative Office Building  
Room 101-A  
33 North State Street  
Concord, NH 03301

Dear Senator Houde and Members of the Senate Judiciary Committee,

I am writing in opposition to HB 375, *an Act relative to immunity for school personnel using reasonable force to protect a minor for special purposes or pupil*. I truly believe that this bill will lead to minor situations being escalated, and ultimately to children being hurt.

**HB 375 – 1 Physical Force by Persons with Special Responsibilities.** Amend RSA 627:6, II to read as follows:

II.(a) A teacher or person otherwise entrusted with the care or supervision of a minor for special purposes *or pupil* is justified [~~on the premises~~] *during the care and supervision of the minor or pupil* in using [necessary] *reasonable force* against any such minor *or pupil*, when the minor *or pupil* creates a disturbance, or refuses to leave the premises, or when it is necessary for the maintenance of discipline. *A teacher or person otherwise entrusted with the care or supervision of such minor or pupil shall be immune from any civil or criminal liability for any act or omission performed in good faith and in accordance with this paragraph.*

(b) In a child care program licensed or exempt from licensure under RSA 170-E, necessary force shall be limited to the minimum physical contact necessary to protect the child, other children present, the staff, or the general public from harm.

HB 375 allows anyone at a school who is entrusted with the care or supervision of a pupil to use reasonable force against that pupil. That could refer to a teacher or administrator, but it could also apply to a paraprofessional, janitor, cafeteria worker, or even, potentially to a parent volunteer. This bill does not require training of any of these individuals in terms of appropriate child management techniques. If this bill were to be implemented, I am concerned that there would be a presumption by some of these individuals that they had not just a right, but an obligation to take whatever action they believed necessary to control an unruly child.

“Reasonable force” means violence, and adults should not have to resort to violence to control children. As part of my job, I frequently talk to parents. I heard from a Dad awhile ago whose 2<sup>nd</sup> grade son had a speech and language impairment – he lisped. Because some of the little boy’s classmates teased him when he left the classroom for speech therapy, taunting him by saying that he was going to the “retard room”, the next time the speech therapist came to get him, the boy refused to go. Do you really believe that this child’s teacher or speech therapist should have resorted to violence to make the child leave the classroom instead of taking the time to figure out the problem and identify an appropriate solution? But, under this bill, that is exactly what could happen. What if the boy was injured when an untrained person used force to remove him? According to HB 375, the adult would be “immune from any civil or criminal liability” as long as they used “reasonable force” in good faith and in accordance with the language in the bill. But what about the child; is this really the most appropriate way for adults to protect the children in their care? After being forcibly compelled to go, how productive do you believe this boy’s speech therapy session would have been? How much more taunting would the child be subjected to by peers who had observed such an altercation? With no one’s safety at risk, the use of force in situations like this just doesn’t make sense.

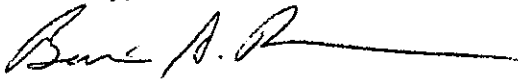
The NH and US Departments of Education have identified a far more proactive, positive and successful way to respond to a child's inappropriate behavior. Positive behavioral intervention and supports (PBIS) has been shown to be effective in changing not only the behavior of individual students, but of transforming the overall climate of a school, engaging students in making their schools more respectful and responsive places; environments that are conducive to student learning. Training and resources about PBIS are available to educators who do not know how to respond to behavioral issues they may encounter, so that the adults in a child's world do not have to resort to violence to control the child.

There may be extraordinary circumstances when the use of force might be warranted. The language in RSA 627:6, II(b) referring to child care programs, protects children and adults from harm by allowing necessary force, "*limited to the minimum physical contact necessary to protect the child, other children present, the staff or the general public from harm*". That seems to me to be a reasonable standard, one that I would support using in schools. If you decide not to just kill HB 375, please replace the paragraph allowing the discretionary use of force to manage what may be minor behavioral violations, with a statement allowing the use of force only when necessary to protect the safety of children or adults, and limiting that force to "*the minimum physical contact necessary to protect the child, other children present, the staff or the general public from harm*".

While rare, there have been instances where children have died while being restrained by untrained staff. The use of physical force by adults, especially untrained adults, is even more likely to cause physical harm to a child. If the use of force allowed by this bill results in the death of even one child, isn't that price too high?

Please vote HB 375 inexpedient to legislate. Thank you.

Sincerely,



Bonnie A. Dunham  
10 Kingston Court  
Merrimack, NH 03054  
Tel. 603-424-4024

# AFT-NH

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February 1, 2011

House Judiciary Committee  
c/o The Honorable Chairperson Michael Balboni  
Legislative Office Building  
Room 208  
107 N. Main Street  
Concord NH 03301  
RE: House Bill 375

Dear Committee Members,

I regret I am unable to be at the hearing due to the snowstorm.

AFT-NH is the State Affiliate of the American Federation of Teachers. The AFT has over one million members with over 4,000 members here in New Hampshire. These members are teachers, school support staff, police, higher education faculty and town employees. AFT-NH is a member of the New Hampshire AFL-CIO which represents over 44,000 working men and women.

Our teachers, paraprofessionals and school personnel face challenging situations every day as they try to educate our children. The number of physical assaults against school district personnel is alarming and has escalated. My background prior to being elected AFT-NH President was as a Special Education Coordinator for the Rochester Middle School. I know what my members are facing every day in their classrooms.

Our members must be protected when they use necessary and reasonable force to maintain order in the classroom. Districts must provide adequate training and support to school district employees.

Our school employees need the protection and support of all of us as well as the legal protection provided by this legislation.

This bill is a good step in the right direction. Frankly, our school district employees should not have to worry about their employment status in these difficult situations when they have had to defend themselves or provide order in the classroom.

Accordingly, I ask that you support HB 375 and include this letter as part of your hearing record. If I can provide additional information to the committee, please feel free to contact me at 603-661-7293 or lhainey@aft-nh.org.

Thank you for your consideration.

Sincerely,

Laura Hainey

AFT-NH President

# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Date: May 26, 2011

THE COMMITTEE ON Judiciary

to which was referred House Bill 375

AN ACT (2nd New Title) relative to immunity for school personnel using reasonable force to protect a minor for special purposes or pupil.

Having considered the same, the committee recommends that the Bill:

**OUGHT TO PASS WITH AMENDMENT**

BY A VOTE OF: 3-1

AMENDMENT # 2218s

Senator Fenton Groen  
For the Committee

Susan Duncan 271-8631



## New Hampshire General Court - Bill Status System

**Docket of HB375**

Docket Abbreviations

**Bill Title:** (2nd New Title) relative to immunity for school personnel using reasonable force to protect a minor for special purposes or pupil.

*Official Docket of HB375:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
1/21/2011	H	Introduced 1/6/2011 and referred to Judiciary; <b>HJ 11</b> , PG. 184
1/26/2011	H	Public Hearing: 2/1/2011 1:30 PM LOB 208
2/2/2011	H	Subcommittee Work Session: 2/8/2011 LOB 208 3:00 PM or Following Public Hearing
2/9/2011	H	Executive Session: 2/14/2011 10:00 AM LOB 208
2/15/2011	H	Committee Report: Ought to Pass with Amendment #0157h(NT) for Feb 23 (Vote 17-0; CC); <b>HC 15</b> , PG.271
2/15/2011	H	Proposed Committee Amendment <b>#2011-0157h</b> (New Title); <b>HC 15</b> , PG.304
2/23/2011	H	Removed from Consent Calendar (Rep P.Schmidt); <b>HJ 21</b> , PG.456
2/23/2011	H	Amendment #0157h (New Title) Adopted, VV; <b>HJ 21</b> , PG.518-519
2/23/2011	H	Ought to Pass with Amendment #0157h(NT): MA VV; <b>HJ 21</b> , PG.518-519
2/23/2011	H	Referred to Education; <b>HJ 21</b> , PG.519
3/16/2011	H	Public Hearing: 3/22/2011 10:00 AM LOB 207 ==Executive Session Will Follow==
3/24/2011	H	Committee Report: Ought to Pass with Amendment #1128h(NT) for Mar 30 (Vote 12-0; RC); <b>HC 27</b> , PG.816
3/24/2011	H	Proposed Committee Amendment <b>#2011-1128h</b> (New Title); <b>HC 27</b> , PG.843
3/30/2011	H	Amendment #1128h (New Title) Adopted, VV; <b>HJ 34</b> , PG.1094-1095
3/30/2011	H	Ought to Pass with Amendment #1128h(NT): MA VV; <b>HJ 34</b> , PG.1094-1095
4/13/2011	S	Introduced and Referred to Judiciary; <b>SJ 13</b> , Pg.258
4/27/2011	S	Hearing: 5/5/11, Room 101, LOB, 1:00 p.m.; <b>SC22</b>
5/26/2011	S	Committee Report: Ought to Pass with Amendment <b>#2011-2218s</b> , 6/1/11; <b>SC26</b>
6/1/2011	S	Without Objection, President Bragdon moved to Special Order HB 375 to the end of the Calendar; <b>SJ 19</b> , Pg.517
6/1/2011	S	Committee Report: Ought to Pass with Amendment <b>#2011-2218s</b> , 6/1/11; <b>SC26</b>
6/1/2011	S	Committee Amendment 2218s, AA, VV; <b>SJ 19</b> , Pg.521
6/1/2011	S	Sen. Stiles Floor Amendment <b>#2011-2271s</b> , RC 19Y-5N, AA; <b>SJ 19</b> , Pg.521
6/1/2011	S	Ought to Pass with Amendments 2218s, 2271s, MA, VV; OT3rdg; <b>SJ 19</b> , Pg.521
6/1/2011	S	Passed by Third Reading Resolution; <b>SJ 19</b> , Pg.539
6/8/2011	H	House Non-Concurs with Senate AM 2218s and 2271s and Requests C of

		C (Reps Rowe and Balboni): MA VV; <b>HJ 51</b> , PG.1717
6/8/2011	H	Speaker Appoints: Reps Sorg, Giuda, Weber, and Boehm; <b>HJ 51</b> , PG.1717
6/8/2011	S	Sen. Houde Accedes to House Request for Committee of Conference, MA, VV
6/8/2011	S	President Appoints: Senators Stiles, Groen and Kelly
6/10/2011	H	Conference Committee Meeting: 6/15/2011 11:00 AM LOB 208
6/16/2011	S	Conference Committee Report; Not Signed Off

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NH House

NH Senate

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# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

ORIGINAL REFERRAL                       RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

- DOCKET (Submit only the latest docket found in Bill Status)
  - COMMITTEE REPORT
  - CALENDAR NOTICE
  - HEARING REPORT
  - PREPARED TESTIMONY AND OTHER SUBMISSIONS HANDED IN AT THE PUBLIC HEARING
- 
- SIGN-UP SHEET(S) (3)

**ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:**

- AMENDMENT # 22185                       - AMENDMENT # \_\_\_\_\_  
 - AMENDMENT # \_\_\_\_\_                       - AMENDMENT # \_\_\_\_\_

**ALL AVAILABLE VERSIONS OF THE BILL:**

AS INTRODUCED                       AS AMENDED BY THE HOUSE  
 FINAL VERSION                       AS AMENDED BY THE SENATE

\_\_\_\_ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

Ø

DATE DELIVERED TO SENATE CLERK

7/21/11

BY:

*Suzanne J. DeLoach*  
COMMITTEE AIDE