

CONSENT CALENDAR

February 3, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Judiciary to which was referred HB
1579,**

**AN ACT relative to landowner liability on land
authorized for outdoor recreational activities. Having
considered the same, report the same with the following
amendment, and the recommendation that the bill
OUGHT TO PASS WITH AMENDMENT.**

Rep. Edward Gordon

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Judiciary
Bill Number:	HB 1579
Title:	relative to landowner liability on land authorized for outdoor recreational activities.
Date:	February 3, 2022
Consent Calendar:	CONSENT
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2022-0438h

STATEMENT OF INTENT

This bill as introduced would greatly expand the definition of premises for the purpose of extending immunity to more owners of property who allow their property to be used for recreational purposes. The testimony at the hearing supported the need to extend the immunity to railroad rights-of-way and corridors so that existing trail systems could be connected. However, the committee found that the language in the bill as originally presented was too broad and would substantially extend immunity protections where it is not warranted, including to all types of easements, including all utility easements. The amendment to this bill does away with the broad definition and limits the extension of immunity to railroad property and railroad rights-of-way to which the public access is permitted access.

Vote 20-1.

Rep. Edward Gordon
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Judiciary

HB 1579, relative to landowner liability on land authorized for outdoor recreational activities. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Edward Gordon for Judiciary. This bill as introduced would greatly expand the definition of premises for the purpose of extending immunity to more owners of property who allow their property to be used for recreational purposes. The testimony at the hearing supported the need to extend the immunity to railroad rights-of-way and corridors so that existing trail systems could be connected. However, the committee found that the language in the bill as originally presented was too broad and would substantially extend immunity protections where it is not warranted, including to all types of easements, including all utility easements. The amendment to this bill does away with the broad definition and limits the extension of immunity to railroad property and railroad rights-of-way to which the public access is permitted access. **Vote 20-1.**

Amendment to HB 1579

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Propagation of Fish and Game; Liability of Landowners; Duty of Care. Amend RSA 212:34, I
4 to read as follows:

5 I. In this section:

6 (a) "Charge" means a payment or fee paid by a person to the landowner for entry upon,
7 or use of the premises, for outdoor recreational activity. ***A contribution or other voluntary***
8 ***payment not required to be made to use such land shall not be considered a charge or fee***
9 ***within the meaning of this section. In addition, a lease of such land for said purposes to***
10 ***the state or any political subdivision thereof, or to any nonprofit corporation, trust, or***
11 ***association, shall not be considered a charge.***

12 (b) "Landowner" means an owner, lessee, holder of an easement, occupant of the
13 premises, or person managing, controlling, or overseeing the premises on behalf of such owner,
14 lessee, holder of an easement, or occupant of the premises, ***including the state or any political***
15 ***subdivision.***

16 (c) "Outdoor recreational activity" means outdoor recreational pursuits including, but
17 not limited to, hunting, fishing, trapping, camping, horseback riding, bicycling, water sports, winter
18 sports, snowmobiling as defined in RSA 215-C:1, XV, operating an OHRV as defined in RSA 215-A:1,
19 V, hiking, ice and rock climbing or bouldering, or sightseeing upon or removing fuel wood from the
20 premises.

21 (d) "Premises" means the land owned, managed, controlled, or overseen by the
22 landowner upon which the outdoor recreational activity subject to this section occurs. ***For the***
23 ***purpose of this section, "land" shall include railroad property and railroad rights-of-way***
24 ***to which public access is permitted.***

25 2 New Paragraph; Limitation of Actions; Landowner Liability Limited. Amend RSA 508:14 by
26 inserting after paragraph III the following new paragraph:

27 IV. In this section, "land" shall include railroad property and railroad rights-of-way. A
28 contribution or other voluntary payment not required to be made to use such land shall not be
29 considered a charge or fee within the meaning of this section. Nor shall a lease of such land for said
30 purposes to the state or any political subdivision thereof or to any nonprofit corporation, trust, or
31 association be considered a charge.

32 3 Effective Date. This act shall take effect 60 days after its passage.



2021 SESSION

Judiciary

Bill #: 1579 Motion: OTPA AM #: 0438h Exec Session Date: 2-3-22

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Gordon, Edward M. Chairman	✓		
McLean, Mark Vice Chairman	✓		
Sylvia, Michael J.	✓		
Wuelper, Kurt F. Clerk	✓		
Alexander, Joe H.	✓		
Rice, Kimberly A. <u>EDWARDS</u>	✓		
Silber, Norman J. <u>MERNER</u>	✓		
Greene, Bob J.	✓		
Kelley, Diane E.	✓		
Tausch, Lindsay <u>ANDRUS</u>	✓		
Trottier, Douglas R.	✓		
Smith, Marjorie K.	✓		
Berch, Paul S. <u>WOODS</u>	✓		
Lorrigan, Timothy O.	✓		
DiLorenzo, Charlotte I.	✓		
Chase, Wendy	✓		
Kenney, Cam E.	✓		
Langley, Diane M.	✓		
McBeath, Rebecca Susan		✓	
Paige, Mark	✓		
Simpson, Alexis	✓		

20

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HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 1579

BILL TITLE: relative to landowner liability on land authorized for outdoor recreational activities.

DATE: 1-20-22

LOB ROOM: 206/8

Time Public Hearing Called to Order: 1:00 PM

Time Adjourned: 2:40 PM

Committee Members: ~~Reps. McLean, Wuelper, Sylvia, Alexander Jr., Notter, Merner, Greene, D. Kelley, Andrus, Trottier, M. Smith, Berch, Horrigan, DiLorenzo, Chase, Kenney, Langley, McBeath, Paige and Simpson~~

Bill Sponsors:

Gould, Hills. 7; Rep. Stavis, Graf. 13; Rep. Cordelli, Carr. 4; Rep. S. Pearson, Rock. 6; Rep. Creighton, Hills. 38; Rep. Notter, Hills. 21; Rep. Gagne, Hills. 13; Rep. Abel, Graf. 13; Sen. Prentiss, Dist 5; Sen. Kahn, Dist 10

TESTIMONY

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

Active of active rail lines are concerned about potential liability as other states, including Maine and Massachusetts, have done. The amendment 2022-0158h replaces the entire bill. The bill removes the liability concern of these owners and allows us to build a world class trail program.

Q DiLorenzo: I see nothing about negligence in the bill?

Ans: Others will answer

Rep Piedra **Opposed** I support rail trails but I think gthe bill will have very negative consequences. Liability protects people from negligent conduct and this bill's intent is to remove that standard. That's why I oppose it.

Rep Howard Pearl Merr 26 **Supports** Outdoor recreation in Nh depends on landowners opening their land. The landowner has to be able to manage their land. I was surprised to hear of a suit against a landowner by one using the land for recreation. RSA 212 provides protection for people using other people's land. Liability protection is a big thing for those of us who allow are land to be used for recreation.

Q Wuelper: Are you suggesting landowners should be protected for all contracted business uses?

Ans: Certainly, when they are allowing services like Logging.

Bill Woodbury **Self** **Opposed** I am Legislative chair for NHAJ We oppose the bill for a number of reasons. The bill started as one to encourage rail-trails, but this bill would dramatically expand the definitions and undermine the original purpose. These statutes were written to protect landowners who simply opened their land for recreation without any concept of what was out there. Case law has expanded the protection for example, covering water bodies and playground equipment. It is our belief that the railroads and rail corridors are already well protected. Supporters acknowledge that this amendment exceeds what they would need for trails. Most of the defined lands are already protected, but the bill will expand the protection to cover however many buildings or other structures on the property. These proposals are exceedingly dangerous.

***Jason Stock NHTOA** **Support** We represent timberland owners and those in the timber industry. We speak to amendment 2022-0158h. I have included testimony from Weyerhaeuser. Outdoor recreation of all kinds in a big part of NH culture and economy. Landowner liability is a big part of that. The Duty of Care statute RSA 212:34 is of particular interest to us.

This Summer a suit was brought against a landowner which showed a gap in the existing liability protection. The landowner had been harvesting timber and there was an accident where he was working. A couple of months later he was sued as a Logger as opposed to as a Landowner. He had done no damage to the trail, but he was still sued. While he was a logger, he was working on his own land. He believes he should have been protected even if working on another's land. We believe that sufficient protection will continue to exist for recreational users even if this bill is enacted.

Q Notter: Where does liability extend now?

Ans: if you are the landowner, you are protected, but a logger or other service provider is not protected on your land.

Q DiLorenzo: were the people injured in the accident.

Ans: Not seriously.

Q This protects the logger wherever he is?

Ans: Yes.

Q Gordon: Suppose the logger left a gouge and the vehicle hit the gouge and one was injured. Would this protect against ordinary negligence?

Ans: Under Roman V, I think negligence would have to be proven, but I am not a lawyer

Roger Turgeon Self Opposed Gov at large of NHAJ I am a rai trail fan and user. This bill goes way beyond the original intention. The lumbermen are already jumping in. The recreational use statute has always said that you were protected even if you are negligent. You can only lose if you act wantonly and willfully. Only about 1% of cases brought under that can win. The foundation of recreational use immunity is we won't hold one responsible who is simply allowing Others to use the property out of the goodness of their heart. When you bring in the idea of contractors, who are being paid, why should that one be protected. What if they put up a chain across the trail and one gets hurt? They would be protected under this bill. The idea of a lease being excluded from a "Charge", is a real problem. Suppose I lease my land to a non-profit to do business? The non-profit would be forever immunized against liability unless one could prove the "willful and wanton" standard.

***Tom Thompson Self Support** I have a lot of land open to public recreational use. The addition of a "landowners' agent" to the duty of care law would go a long way to giving us peace of mind.

Q Horrigan: Do you have any more information about the case we have heard about?

Ans: No.

Q DiLorenzo: Have you ever been approached by anyone who used your land?

Ans: No. We have seen serious vandalism and had some other issues. I know of a case where a farmer was sued after someone built a tree stand and then fell out of it. I believe the suit didn't get far, but the farmer had to pay around \$10,000 to make it go away. I have suffered over \$6,000 damages in one instance., eventually people are just going to say it's not worth it. One certified letter in the mail, when we're opening our land for free, might cost me my farm that I started when I was 11 years old.

Q: Was the vandalism covered by insurance?

Ans: the trick is you have to catch them in the act. We did in this case; went to court; and they each had to pay \$2,000.

Joyce Rose Self Support We own over 2,500 acres in several towns. Some in the form of an LLC for liability purposes. We love it when people use our land. Most people are extremely respectful. We also run a logging company and rotate our logging throughout our property. I support the amendment. Only the rider should be responsible for what they do. Without this amendment, we would be very wary of working on land where trails exist. The amendment will reduce liability to the agents like us.

Q Gordon: You are part of the suit we've heard about. What are the claimants saying you did wrong?

Ans: I probably should not say. We also agree the other categories added in the definitions section. We support add in protection for "any business owned in whole or in part by the landowner" as well. See Written

Dan Luker NHTOA **Support** These laws have been in place for decades and they do what they are supposed to do. The addition of the agent just extends the immunity for simple negligence to the agent.

Q Wuelper: We've heard today that the 'gross negligence' standard is hardly ever successful. Doesn't this change give nearly total immunity to all agents?

Ans: No, the gross negligence standard still exists.

Q Gordon: Is there a middle ground in terms of immunity for agents?

Ans: I don't see any reason for one.

Robert Johnson NH Farm bureau **Support** Our understanding has always been that existing liability coverage only covers the rail itself. We are concerned that there may be a loophole in that coverage and this amendment would close that loophole.

Jason Soukup Manchester Moves **Support** We've been working very hard to create a statewide rail-trail. The big gap is between Manchester and Concord. It's been easy to get abandoned rail property but we have that gap. We have an opportunity to close that gap. That rail line has been sold to CSX. We have been in dialogue with CSX for over a year. The state will build, but only with approval of CSX who is concerned about liability. They say they will agree with a law such as HB1579.

Q Wuelper: Are you supporting the original amended or both:

Ans: Original

Scott Rineer Wagner Forest Management **Support Amendment** We manage a huge amount of land with many trails. Managing this land has become more difficult and costly with dramatic increase in use, especially during the pandemic. Managing the se private lands adding loggers. Truckers, and other agents will help us manage these properties.

Garrett McLarty Manchester Moves **Support** The fear of a lawsuit is often enough to inhibit landowners from opening their land to the public. Encouraging more land to be open is an important move to improve health in our state. We have seen greater and greater restrictions on where we can take children outside. Outdoor recreation is not a roller coaster. I think we should ask we support both the bill and the amendment.

Chet Clem Self **Support Original** We own and are developing a 38-acre parcel. This bill will make it easier for us to continue the growth of trail corridors. Connecting our town to the river via trails is central to our plan for revitalization of West Lebanon.

Marissa Chase NHAJ **Opposed both as introduced and as amended** There is a fundamental lack of understanding about liability law. Gross Negligence has never been recognized in our courts. Right now, the chain across the trail would be simple negligence. There are cases that cover the situations mentioned during this hearing. Adopting this bill will create unlimited unintended consequences. Many businesses are regulated by other statutes. I heard nothing about utilities or assurances that this bill would persuade them to open land for recreation.



Rep Kurt Wuelper, Clerk

House Remote Testify

Judiciary Committee Testify List for Bill HB1579 on 2022-01-20

Support: 9 Oppose: 81 Neutral: 0 Total to Testify: 0

[Export to Excel](#)

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Kowalczyk, Michael	E SWANZEY, NH mkowalczyk1958@gmail.com	A Member of the Public	Myself	Support	No	No	1/15/2022 4:27 PM
Topham, Dave	Salem, NH dstopham@comcast.net	A Member of the Public	Myself	Support	No	No	1/15/2022 7:00 PM
Kahn, Jay	keene, NH jay.kahn@leg.state.nh.us	An Elected Official	Myself	Support	No	No	1/16/2022 11:13 AM
Potucek, John	Derry, NH potucek1@comcast.net	An Elected Official	Myself	Support	No	No	1/17/2022 1:51 PM
Smith, Boyd	Concord, NH, NH pemigw1@comcast.net	A Member of the Public	Myself	Support	No	No	1/17/2022 4:19 PM
Westhoff, Richard	Hudson, NH rcwesthoff@yahoo.com	A Member of the Public	Myself	Support	No	No	1/17/2022 4:49 PM
Borowski, Marianne	Glen, NH Marianneborowski@yahoo.com	A Member of the Public	Myself	Support	No	No	1/18/2022 7:59 AM
Bowles, Margaret	Lyme, NH mcb2885@gmail.com	A Member of the Public	Myself	Support	No	No	1/18/2022 10:23 AM
Saba, Robin	CANDIA, NH rbrooks230@hotmail.com	A Member of the Public	Myself	Support	No	No	1/18/2022 2:42 PM
Brown, Jean	Hanover, NH jean.e.brown1@gmail.com	A Member of the Public	Myself	Support	No	No	1/18/2022 6:21 PM
Hirai, Barbara	Lebanon, NH BPHirai@gmail.com	A Member of the Public	Myself	Support	No	No	1/18/2022 9:53 PM
Byrnes, Margaret	Concord, NH mbyrnes@nhmunicipal.org	A Lobbyist	NH Municipal Association	Support	No	No	1/19/2022 1:09 PM
Drysdale, Robert	Hanover, NH scotdrysdale47@gmail.com	A Member of the Public	Myself	Support	No	No	1/19/2022 4:44 PM

Anastasia, Patricia	Londonderry, NH patti.anastasia@gmail.com	A Member of the Public	Myself	Oppose	No	No	1/19/2022 9:28 PM
Liot Hill, Karen	Lebanon, NH karenliothill@gmail.com	An Elected Official	Lebanon	Support	No	No	1/19/2022 10:03 PM
Wilkie, Devin	Lebanon, NH devin.wilkie@gmail.com	An Elected Official	Myself	Support	No	No	1/19/2022 10:04 PM
Kolb, Ellen	Merrimack, NH ellenkolbnh@gmail.com	A Member of the Public	Myself	Support	No	No	1/19/2022 11:47 PM
Loveless, Eric	bedford, NH nassur34@protonmail.com	A Member of the Public	Myself	Support	No	No	1/20/2022 12:28 AM
CREIGHTON, JAMES	Antrim, NH creatch32@msn.com	An Elected Official	Myself	Support	No	No	1/20/2022 9:31 AM
Chase, Marissa	Manchester, NH mchase@nhaj.org	A Lobbyist	NH Association for Justice	Oppose	No	No	1/20/2022 9:41 AM
Soukup, Elizabeth	Manchester, NH elizabeth.s.soukup@gmail.com	A Member of the Public	Myself	Support	No	No	1/20/2022 11:25 AM
Soukup, Jason	Manchester, NH jason.soukup@gmail.com	A Member of the Public	Myself	Support	No	No	1/20/2022 11:28 AM
golden, jonathan	manchester, NH jgolden@manchesternh.gov	A Member of the Public	Myself	Support	No	No	1/20/2022 11:46 AM
Fife, Christopher	Fairfield, ME Chris.Fife@weyerhaeuser.com	A Member of the Public	Weyerhaeuser	Support	No	No	1/20/2022 11:51 AM
Gayman, Benjamin	Manchester, NH Bfgman@comcast.net	A Member of the Public	Myself	Support	No	No	1/20/2022 11:52 AM
Krieger, bridget	Manchester, NH bridget13k@GMAIL.COM	A Member of the Public	Myself	Support	No	No	1/20/2022 11:52 AM
Pedone, Jennifer	Manchester, NH jennapedone@gmail.com	A Member of the Public	Myself	Support	No	No	1/20/2022 11:52 AM
Gayman, Carol	Manchester, NH Cgayman@comcast.net	A Member of the Public	Myself	Support	No	No	1/20/2022 11:52 AM
Corby, Suzanne	Manchester, NH oas-corby@comcast.net	A Member of the Public	Myself	Support	No	No	1/20/2022 11:53 AM
Egan, Michael	Manchester, NH mike-ta@kpme68.net	A Member of the Public	Myself	Support	No	No	1/20/2022 11:54 AM
Girard, Richard	Manchester, NH raring-nimbi0c@icloud.com	A Member of the Public	Myself	Support	No	No	1/20/2022 11:58 AM

MATTSON, TOM	MANCHESTER, NH tmattson@manchesternh.gov	A Member of the Public	Myself	Support	No	No	1/20/2022 11:59 AM
Vogt, Alex	Bedford, NH alexvogt1953@gmail.com	A Member of the Public	Myself	Support	No	No	1/20/2022 12:00 PM
Benoit, Darren	Bow, NH dbenoitnh@gmail.com	A Member of the Public	Myself	Support	No	No	1/20/2022 12:01 PM
Lewry, Stephanie	Manchester, NH swlewry@gmail.com	A Member of the Public	Myself	Support	No	No	1/20/2022 12:01 PM
Letvinchuk, Alex	Manchester, NH Aletvinchuk@gmail.com	A Member of the Public	Myself	Support	No	No	1/20/2022 12:02 PM
Spiro, Keith	Manchester, NH Keith@KeithSpiroMedia.com	A Member of the Public	Myself	Support	No	No	1/20/2022 12:02 PM
Pieroni, Kathleen	Hooksett, NH J.pieroni@comcast.net	A Member of the Public	Myself	Support	No	No	1/20/2022 12:03 PM
Pieroni, John	Hooksett, NH Johnpieroni@icloud.com	A Member of the Public	Myself	Support	No	No	1/20/2022 12:05 PM
Gioia, Mike	Manchester, NH monopolybag@gmail.com	A Member of the Public	Myself	Support	No	No	1/20/2022 12:06 PM
Waldron, Donald	Manchester, NH don@waldronnh.com	A Member of the Public	Myself	Support	No	No	1/20/2022 12:06 PM
Turner, Christopher	Manchester, NH Turner.cm@comcast.net	A Member of the Public	Myself	Support	No	No	1/20/2022 12:07 PM
Dunn, Douglas	Manchester, NH Dunn1954@comcast.net	A Member of the Public	Myself	Support	No	No	1/20/2022 12:08 PM
Noonan, Peter	Manchester, NH peteranoonan@me.com	A Member of the Public	Myself	Support	No	No	1/20/2022 12:08 PM
Swiniarski, Chris	Bedford, NH swin500@gmail.com	A Member of the Public	Myself	Support	No	No	1/20/2022 12:10 PM
Mercier, Cynthia	Manchester, NH cynthiamercier1955@hotmail.com	A Member of the Public	Myself	Support	No	No	1/20/2022 12:17 PM
Robidoux, Carol	Manchester, NH publisher@manchesterinklink.com	A Member of the Public	Myself	Support	No	No	1/20/2022 12:17 PM
Sarwark, Valerie	Manchester, NH VSarwark@gmail.com	A Member of the Public	Myself	Support	No	No	1/20/2022 12:19 PM
Sarwark, Nicholas Sarwark	Manchester, NH nsarwark@wedgesquared.com	A Member of the Public	Myself	Support	No	No	1/20/2022 12:20 PM

Armstrong, Jill	Manchester, NH jaarmstr1@gmail.com	A Member of the Public	Myself	Support	No	No	1/20/2022 12:23 PM
Kline, Nicholas	Dover, NH nkline@shaheengordon.com	A Member of the Public	Myself	Oppose	No	No	1/20/2022 12:25 PM
Walczyk, Alexander	Hooksett, NH awalczyk@comcast.net	An Elected Official	Myself	Support	No	No	1/20/2022 12:27 PM
Woodard, Albert	Manchester, NH agwoodard@comcast.net	A Member of the Public	Myself	Support	No	No	1/20/2022 12:28 PM
Williams, Christopher	Manchester, NH cjwilliams4@gmail.com	A Member of the Public	Myself	Support	No	No	1/20/2022 12:40 PM
Gersten, Joanne	Hooksett, NH Andy1408@comcast.net	A Member of the Public	Myself	Support	No	No	1/20/2022 12:41 PM
Bannister, Kristen	Manchester, NH klb5551@msn.com	A Member of the Public	Myself	Support	No	No	1/20/2022 12:45 PM
Ross, Kristin	Piermont, NH kristin@nhvtlaw.com	A Member of the Public	Myself	Oppose	No	No	1/20/2022 1:06 PM
Craig, Christine	Newburyport, MA ccraig@shaheengordon.com	A Member of the Public	Myself	Oppose	No	No	1/20/2022 1:06 PM
Walton, Andrew	Steep Falls, ME Andrew.walton72@yahoo.com	A Member of the Public	Myself	Support	No	No	1/20/2022 1:29 PM
Ross, Rebecca	Concord, NH rlwoodard@yahoo.com	A Member of the Public	Myself	Support	No	No	1/20/2022 2:01 PM
Seufert, Christopher	Franklin, NH cseufert@seufertlaw.com	A Member of the Public	Myself	Oppose	No	No	1/20/2022 2:09 PM
Vanacore, John	Concord, NH john@vanacorelaw.com	A Member of the Public	Myself	Oppose	No	No	1/20/2022 2:57 PM
gagnon, larry	bedford, NH larry.gagnon@comcast.net	A Member of the Public	Myself	Support	No	No	1/20/2022 3:23 PM
Susca, Paul	Goffstown, NH Pasusca@comcast.net	A Member of the Public	Myself	Support	No	No	1/20/2022 4:53 PM
Clifford, Virginia	Candia, NH vstmartin@comcast.net	A Member of the Public	Myself	Support	No	No	1/20/2022 7:07 PM
brown, stephen	Rochester, NH sbrown@brownlawnh.com	A Member of the Public	Myself	Oppose	No	No	1/20/2022 10:08 PM
Buchanan, Christopher	Amherst, NH cbuchanan@af.amherstnh.gov	A Member of the Public	Myself	Support	No	No	1/21/2022 10:20 AM

Archived: Tuesday, March 15, 2022 11:50:27 AM

From: [Allan Reetz](#)

Sent: Tuesday, January 25, 2022 10:58:41 AM

To: ~House Judiciary Committee

Subject: Letter in support of HB1579

Importance: Normal

Attachments:

Hanover Coop_NH HB1579_ar1_25.pdf ;

Please share the attached PDF with members of the House Judiciary Committee.

The document details our support for: 2022 House Bill 1579 — An Act relative to landowner liability on land authorized for outdoor recreational activities.

Allan

[Allan Reetz](#)

Director of Public and Government Affairs

Hanover Co-op Food Stores & Auto Service Centers

802-765-2871



<http://press.coopfoodstore.coop/>

<http://coopfoodstore.coop/>

<https://www.linkedin.com/company/2629073/>

<https://www.linkedin.com/in/allan-reetz-76771419/>

<https://www.facebook.com/CoopFoodStores/>

<http://coopnews.coop/>

Archived: Tuesday, March 15, 2022 11:50:25 AM

From: [Andrew Livernois](#)

Sent: Friday, January 28, 2022 8:57:18 AM

To: ~House Judiciary Committee

Subject: HB 1597

Importance: Normal

Attachments:

[Testimony in Opposition -- Final with signature.pdf](#) 

Honorable Members of the Judiciary Committee:

Enclosed please find a copy of my written testimony from the hearing on January 27, 2022 regarding HB 1597 relating to the Felonies First program.

Yours,

/s/ Andrew B. Livernois

Andrew B. Livernois, Esq.

Belknap County Attorney

64 Court Street

Laconia, NH 03246

603-527-5440

alivernois@belknapcounty.org

Archived: Wednesday, March 16, 2022 10:52:04 AM

From: Fife, Chris

Sent: Thursday, January 20, 2022 11:16:07 AM

To: ~House Judiciary Committee

Subject: HB 1579 Testimony from Weyerhaeuser

Importance: Normal

Attachments:

WY Testimony_support_HB1579_Duty_of_care.docx ;

Please find attached written testimony supporting HB 1579 **and** the addition of a landowner's agent to the duty of care law.

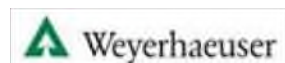
Thank you for your consideration. Please reach out if you have any questions regarding Weyerhaeuser's recreational policy in New Hampshire.

Sincerely,

Chris

Christopher Fife | Public Affairs Manager-Northeast

207.453.1051 (w) | 802.473.0866 (m)



OUR VISION: Working together to be the world's premier timber, land, and forest products company

OUR VALUES: Safety | Integrity | Citizenship | Sustainability | Inclusion

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Archived: Tuesday, March 15, 2022 11:50:25 AM

From: DAVID TOPHAM

Sent: Sunday, January 30, 2022 10:03:58 PM

To: ~House Judiciary Committee

Cc: Linda Gould; Richard Westhoff; jason.soukup@gmail.com; Mike Kowalczyk; Tom Sexton; Marianne Borowski; Abby Evankow; Jasen Stock

Subject: Additional information in support of HB-1579

Importance: Normal

Attachments:

001 - New Hampshire Recreational Use Statutes.pdf 

01-30-2022

Dear Judiciary Committee Members:

At the suggestion of HB-1579 primary sponsor Rep. Linda Gould, please review the following details. Note that NH Rec Use Statutes have been in effect for approximately 60 years, do not include amusement parks, similar legislation in Massachusetts includes the "agent" provision, and HB-1579 does not seek anything unusual nor impose extra costs on any party.

If you have questions please contact me. Thank you for your attention!

Dave Topham
NHRTC President
603-898-9926
dstopham@comcast.net

Re: HB 1579

Attention: New Hampshire House Judiciary Committee

This bill is an effort to bring the New Hampshire Recreational Use Statutes up to date with those of neighboring states regarding the protection of companies and organizations that allow and enable land to be used for recreation. This has been done in response to recommendations by rail trail advocates in Massachusetts and by the Rails-to-Trails Conservancy in DC. Let me review the timeline of the two statutes that were used as models for the new amendments:

Maine:

Maine amended its recreational use statutes in 2005 in a piece of legislation referred to informally as "Maine's Rail with Trail Liability Amendment". This effort was successful and the process has been documented in the following link:

http://www.eastertrail.org/documents/maine_rr_liability.html

A study done by the Cornell Human Dimensions Unit on "...Rec Use Statutes in Northern Forest States" reviewed several New England states and recommended that Maine's newly amended law provided some of the broadest liability protection of the states

reviewed. This same report suggested several amendments to the MA and NH recreational use statutes to encourage increased recreational use of public and private lands.

Massachusetts

After the above report, in 2008, Massachusetts amended its recreational use statutes to include similar amendments to those proposed in HB-1579.

Though the amendment process is not as clearly documented in public online sources as is the Maine law change, the amendments can be discovered from the current law and the law as quoted in the Cornell document, which does not contain much of the yellow-highlighted language in the NHRTC's document "New Hampshire Recreational Use Statues" which is also attached for reference. It is noted that even before the 2008 amendments the Massachusetts law contained additional language that was adopted to amend the NH statutes regarding the definition of a usage fee.

It should be noted that the Massachusetts statute calls out more "persons" protected from liability, including government, non-profit organizations **and their agents**, so the inclusion of agents as requested by the Timber Owners Association has been in the Massachusetts statute since before the 2008 amendments and is also well-vetted law.

Respectfully Submitted,
New Hampshire Rail Trails Coalition
Author: Richard Westhoff
1/28/2022

=====

Archived: Wednesday, March 16, 2022 10:52:05 AM

From: [Marissa Chase](#)

Sent: Thursday, January 20, 2022 9:04:35 AM

To: ~House Judiciary Committee

Subject: NHAJ testimony opposing HB 1579

Importance: Normal

Attachments:

[2022 oppose HB 1579.pdf](#) 

Good morning, Representatives,

Attached is the NH Association for Justice's testimony opposing [HB 1579](#), relative to landowner liability on land authorized for outdoor recreational activities.

Myself, our legislative chair Bill Woodbury, and Board member Roger Turgeon will be there today to testify and answer any questions you may have.

Thank you,
Marissa

Marissa Chase

Executive Director

New Hampshire Association for Justice

PO Box 1583

Concord, NH 03302-1583 ***please note our new address*

O 603.224.7077 **F** 603.224.3256 **I** **C** 603.854.9330

Archived: Wednesday, March 16, 2022 10:52:03 AM

From: [Jasen Stock](#)

Sent: Friday, January 21, 2022 3:45:53 PM

To: ~House Judiciary Committee

Subject: House Bill 1579

Importance: Normal

Attachments:

[nhtoa testimony 1-20-22.pdf](#) [WY Testimony_support_HB1579_Duty_of_care.docx](#) [Working Lands Report exec summary.pdf](#)

Chairman Gordon and members of the N.H. House Judiciary Committee,

I want to thank you again for the opportunity to testify yesterday on House Bill 1579, *AN ACT relative to landowner liability on land authorized for outdoor recreational activities* and Rep. Gould's amendment # 2022-0158h. As you heard in testimony this is an issue of importance to our members and we appreciate your time and consideration of this bill and amendment. If you have any follow-up questions please contact me.

Also, it was suggested I forward an electronic copy of my testimony for the hearing record. I am attaching the three items I circulated at the hearing. They are a copy of my testimony letter, the testimony letter from Weyerhaeuser, and the executive summary of the working lands economic report my testimony references.

Again, thank you for your consideration.

Jasen

Jasen A. Stock
Executive Director
New Hampshire Timberland Owners Association
54 Portsmouth St.
Concord, NH 03301
603-224-9699 (office)
603-674-8148 (cell)
www.nhtoa.org



House Judiciary Committee
Hon. Ned Gordon, Chair

January 20, 2022

Re: Opposition to HB 1579

Dear Chairman Gordon and Members of the Committee:

NHAJ is a statewide professional trade association of approximately 400 trial attorneys who predominantly practice in the areas of personal injury, family law, medical malpractice, civil rights, employment law, workers' compensation, and consumer protection matters. As New Hampshire is a small state with a collegial bar, that list of practice areas is not exhaustive. If our organization can ever be of assistance or serve as a legal resource to any of you, or your constituents, please do not hesitate to give me a call. As practicing attorneys with a variety of experience, we oppose HB 1579 as introduced for the following reasons.

Existing caselaw makes this bill unnecessary

Under Dolbear v. City of Laconia, 168 NH 52 (2015), existing caselaw removes the need for this bill and its stated intent. The case was about a woman who was using playground equipment in a public park with her granddaughter and sustained a severe knee injury. When the case reached the Superior Court, the judge agreed with *Dolbear* that the use of playground equipment was not “outdoor recreational activity” as defined in RSA 212: 34 and that it did not constitute the use of land under RSA 508: 14. The insurance company for the city of Laconia appealed.

In the end, the case stood for a couple of things. In the recreational immunity statute RSA 212:34, there is a list of specific outdoor recreational activities. This is at 212:34, I. The list includes but is not limited to hunting, fishing, trapping, camping, horseback riding, bicycling, water sports, winter sports, snowmobiling, operating an OHRV, hiking, ice and rock climbing or bouldering, and sightseeing. The plaintiff argued that use of structures that were provided specifically to attract people onto the land shouldn't be considered as falling under that list as other items on that list involve equipment that people bring with them. The Court disagreed and said that on its face, the statute is not limited to outside recreational activities involving equipment provided by the user. The Court emphasized RSA 212: 34, V which indicates that “a landowner owes no duty of care to keep premises safe for entry or use by others for outdoor recreational activity or to give any warning of hazardous conditions, uses of, **structures**, or activities on such premises to persons entering for such purposes.”

With respect to the second of the landowner liability statutes, RSA 508:14, the Court cited the case of Coan v. NH Department of Environmental Services, 161 NH 1 (2010). This case essentially stands for the prospect that when one uses land held open to the public without charge to access certain elements, in that case a body of water, for recreational activity, the landowner was entitled to the immunity under the statute. The Court felt Dolbeare was similar as she had crossed the open land to access the playground equipment.

Our position is that the Supreme Court's interpretation of these particular statutes under *Coan* and *Dolbeare* provides wide ranging protections for all entities seeking said protection. The proposal in HB 1579 is unnecessarily broad and generally unnecessary. If anything, it is a situation where defining things too narrowly may in fact negatively impact a landowner seeking immunity later on.

Unintended Consequences

The underlying foundational premise of recreational immunity statutes is to encourage landowners to allow **free use** of their land for recreational purposes. We believe that's a good thing. The lease language that this bill adds to section I(a) of RSA 212:34 threatens to do away with that premise, granting immunity even to those who profit from such recreational use.

Section I(a) as proposed in HB 1579 would amend the statute's definition of what it means to "charge" for use of the land, such that the immunity would not apply. This bill would insert an exception to that definition:

"A lease of such land for said purposes...to any nonprofit corporation, trust, or association, shall not be considered a charge."

Our fear is unintended interpretation of this language could turn the amended statute into one that grants immunity to **owners of all arguably recreational property**, even those who profit greatly from it.

Imagine, for example, that entity X owns an amusement park replete with roller coasters, bungee jumps, zip lines, and other structures that can cause serious injury or death if not maintained properly. Presently, the prospect of a lawsuit for negligent maintenance is the only legal incentive that entity X has to keep the park safe.

Then entity X creates a non-profit entity dedicated to making recreational activities available to all. X then leases the amusement park to this non-profit entity for an amount that equals the desired profit level. That nonprofit raises the funds needed to pay that lease through a combination of public donations, user donations, and perhaps even actual entrance fees.

As the park owner, X is now profiting as much as, or more than, it did before the arrangement, but X can drastically reduce its maintenance costs because it does not have to worry about being sued if, for example, a rollercoaster car flies off the rails. And the non-profit is protected by RSA 508:17, with its liability limited to \$250,000 per person injured

or killed by its negligence, and \$1,000,000 aggregate no matter how many people are harmed or killed in a single incident.

In essence, the owner of virtually every for-profit facility in this state that has an arguably recreational purpose will be able to render itself immune from liability for its own negligence if this bill passes as written.

We respectfully urge this committee to vote this legislation “inexpedient to legislate”. Please do not hesitate to contact us should you have any further questions.

Thank you for your time and consideration.

A handwritten signature in cursive script that reads "Marissa Chase".

Marissa Chase
Executive Director
New Hampshire Association for Justice

Christopher Fife

Weyerhaeuser Public Affairs Manager
49 Mountain Ave, P.O. Box 89
Fairfield, ME 04937
207.453.1051 (w) | 802.473.0866 (m)
Chris.fife@weyerhaeuser.com

Representative Edward Gordon, Chairman
N.H. House of Representatives Judiciary Committee
New Hampshire Legislative Office Building, Room 208
Concord, NH 03301

RE: House Bill 1579 - landowner agent liability protection

Chairman Gordon and Distinguished Members of the House Judiciary Committee,

Weyerhaeuser is submitting this testimony in support of HB 1579 and the addition of a landowner's agent to the duty of care law.

Weyerhaeuser owns and manages approximately 24,000 acres in Coos County in the towns of Errol, Dummer, Cambridge and Wentworth Location. 100% of our timberlands are certified to sustainable forestry standards through the Sustainable Forestry Initiative (SFI). We have a conservation easement on our timberlands in New Hampshire that ensures the land will be managed for timber, will never be developed and will remain open to the public for snowmobiling and dispersed recreation.

Four Weyerhaeuser foresters work out of our office in Lancaster, NH. Additionally, we use multiple contractors to harvest on our timberlands and truck the wood and to build and maintain logging roads for our operations. Our sustainable timber management provides an important economic contribution to the local economy and the state both through direct annual economic activity, payroll and timber taxes while also providing high quality wildlife habitat and recreational opportunities.

We maintain an open lands policy on our timberland in New Hampshire (as we do in Maine and Vermont). Under this policy we allow enhanced recreation by the public including vehicular access on our forest management roads, and trails for ATVs. This enhanced access facilitates the public's ability to hunt, fish and enjoy other dispersed recreation in areas where terrain and distance would otherwise deter most people. In return we ask the users to respect the property, give right of way to trucks, and avoid active operations. Wherever possible we post roads as closed to the public when we have active operations and work with trail groups to close or temporarily relocate trails.

Although most recreational users respect signage there are instances where recreationalists, by accident or intentionally, end up amid active operations. Additionally, we have faced people cutting firewood without permission, riding snowmobiles off trail over piles of wood ready for trucking, riding ATVs off trail up steep embankments in gravel pits, riding snowmobiles down a plowed road right past active equipment on a logging job and target shooting down a primary haul road. These are a few of the incidents that our foresters have encountered, how many others occur that we know nothing about? In short, a small percentage of recreational users do stupid and even dangerous things.

New Hampshire's landowner liability law enables Weyerhaeuser to continue our open lands policy. However, the foresters, loggers, truckers, and other contractors who are essential to profitable and sustainable timber management are not protected under the duty of care laws. Amending HB 1579 to include the addition of a landowner's agent to the duty of care law will provide protection for these essential businesses in the forest products supply chain. It will also encourage landowners to continue to generously share their land with recreational users, a practice that benefits local communities and the state.

Extending this liability protection to a landowner's agent **does not** protect landowners or their agents from willful, intentional, or malicious acts or failures to guard or warn against a dangerous condition, use, structure, or activity. Additionally, **does not** remove a landowner's or their agent's duty of care if they charge for entry onto the property.

As a New Hampshire timberland owner, Weyerhaeuser urges the Committee to pass HB 1579 with the addition of a landowner's agent to the duty of care law.

Sincerely,

Christopher Fife

Archived: Wednesday, March 16, 2022 10:39:05 AM

From: pemigw1@comcast.net

Sent: Monday, January 17, 2022 4:49:21 PM

To: ~House Judiciary Committee

Subject: HB 1579 - Please Support

Importance: Normal

Dear Chairman Gordon and Committee Members: As someone who has discovered the great pleasure of riding my bicycle on rail trails in NH and several other states, and has learned about the many economic, community, environmental, and health benefits that rail trails provide, I encourage this Committee to support HB 1579, which helps to remove a potential barrier to making New Hampshire a world-class riding destination.

Where active rail lines exist, they often provide the best connecting link for our State-wide rail trail network such as the Manchester to Concord section of the [Granite State Rail Trail](#). When completed, this trail will connect Salem and Lebanon, NH and bring millions of dollars into the State through enhanced tourism and local ridership. Owners of active rail lines are justifiably concerned about potential liability from shared use of their right of way. HB 1579 bill seeks to overcome that concern as it has been overcome in other states including MA and ME.

Rails-with-trails can be constructed and used safely. Roughly 1,000 miles of rail-with-trail across the US have demonstrated that all the benefits of rail trails can be achieved with a high degree of safety. According to [USDOT May 2021 analysis](#), any related risks can be readily addressed during project design and construction.

HB 1579 eliminates liability for railroad operators that allow a trail adjacent to their tracks, and greatly increases our ability to create a world-class network of recreational and alternative transportation trails that meet numerous State and local goals and needs.

I respectfully request that, as I do, you wholeheartedly support HB 1579, as it makes such good sense for the quality of life of our residents and the tourist economy that we depend on.

Sincerely,

Boyd Smith / Concord, NH

Archived: Wednesday, March 16, 2022 10:39:05 AM
From: [Shaun Lagueux](#)
Sent: Tuesday, January 18, 2022 8:17:38 AM
To: [~House Judiciary Committee](#)
Subject: House Bill 1579 - landowner agent liability protection
Importance: Normal

Representative Edward Gordon, Chairman

N.H. House of Representatives Judiciary Committee

New Hampshire Legislative Office Building, Room 208

Concord, NH 03301

As a NH licensed forester, and President of New England Forestry Consultants, I manage roughly 100,000 acres throughout central NH, many of which are in your district. **I write today in support of HB1579 and the addition of a landowner's agent to the duty of care law.**

I believe the bill, and the amendment, are important for the following reasons:

- Managing recreational use and protecting myself and clients from liability is becoming more difficult and costly (recall the bill's focus is on trail use, but the duty of care applies to all uses),
- As a landowner's agent, we often have had to accommodate recreational uses to maintain safety (i.e., post signage, moving haul roads, skid trails, etc. where it was needed),
- There have been examples of where I or my clients have been threatened with suit or sued for liability by recreational users,
- Managing the land is necessary to the economic sustainability of property ownership,
- With increased recreational use of land, there are more opportunities for conflict,
- Adding landowner agent to the duty of care protections protects those companies (loggers and truckers) who make property ownership economically viable

What HB 1579 and the adding of landowner agent to the duty of care law does NOT do

- Does not protect landowners or their agents from willful, intentional, or malicious acts or failures to guard or warn against a dangerous condition, use, structure, or activity,
- Does not remove a landowner's or their agent's duty of care if they charge for entry onto the property,

Thank you for considering my thoughts on HB1579 and why I feel it and the agent addition are needed. **I reiterate my support for HB1579 and the addition of landowner's agent to the duty of care protections.**

--

Shaun Lagueux, President

NH Licensed Forester #324

New England Forestry Consultants, Incorporated

p: 603.744.6548 m: 603.481.2549

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a: 70 Overlook Drive
Bristol, NH 03222

w: www.cforesters.com e: shaunlagueux@gmail.com



Archived: Tuesday, March 15, 2022 11:46:43 AM
From: [William Peirce](#)
Sent: Saturday, January 29, 2022 2:41:11 PM
To: [~House Judiciary Committee](#)
Subject: HB 1579 landowner liability bill
Importance: Normal

RE: HB 1579

Chairman Gordon and members of the Judiciary Committee,

My family owns land in South Hampton with is in "current use". It is used by the general public to view fireworks displays. I am confident that the existing laws protect us sufficiently from liability. This bill is unnecessary.

Furthermore, I worry that if this bill passed, the farmers and contractors working on our land would have less incentive to operate safely. That could put both my family and members of the public in jeopardy.

Sincerely,

William Peirce

53 Rogers Road

Kittery ME 03904

HB 1579 - AS INTRODUCED

2022 SESSION

22-2247

04/05

HOUSE BILL **1579**

AN ACT relative to landowner liability on land authorized for outdoor recreational activities.

SPONSORS: Rep. Gould, Hills. 7; Rep. Stavis, Graf. 13; Rep. Cordelli, Carr. 4; Rep. S. Pearson, Rock. 6; Rep. Creighton, Hills. 38; Rep. Notter, Hills. 21; Rep. Gagne, Hills. 13; Rep. Abel, Graf. 13; Sen. Prentiss, Dist 5; Sen. Kahn, Dist 10

COMMITTEE: Judiciary

ANALYSIS

This bill provides for landowner liability involving the use of land for outdoor recreational activities.

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.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to landowner liability on land authorized for outdoor recreational activities.

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

1 1 Propagation of Fish and Game; Liability of Landowners; Duty of Care. Amend RSA 212:34, I
2 to read as follows:

3 I. In this section:

4 (a) "Charge" means a payment or fee paid by a person to the landowner for entry upon,
5 or use of the premises, for outdoor recreational activity. ***A contribution or other voluntary***
6 ***payment not required to be made to use such land shall not be considered a charge or fee***
7 ***within the meaning of this section. In addition, a lease of such land for said purposes to***
8 ***the state or any political subdivision thereof, or to any nonprofit corporation, trust, or***
9 ***association, shall not be considered a charge.***

10 (b) "Landowner" means an owner, lessee, holder of an easement, occupant of the
11 premises, or person managing, controlling, or overseeing the premises on behalf of such owner,
12 lessee, holder of an easement, or occupant of the premises.

13 (c) "Outdoor recreational activity" means outdoor recreational pursuits including, but
14 not limited to, hunting, fishing, trapping, camping, horseback riding, bicycling, water sports, winter
15 sports, snowmobiling as defined in RSA 215-C:1, XV, operating an OHRV as defined in RSA 215-A:1,
16 V, hiking, ice and rock climbing or bouldering, or sightseeing upon or removing fuel wood from the
17 premises.

18 (d) "Premises" means the land owned, managed, controlled, or overseen by the
19 landowner upon which the outdoor recreational activity subject to this section occurs. ***"Premises"***
20 ***may include, but is not limited to, improved and unimproved lands, private ways, roads,***
21 ***buildings, and structures on such lands as well as water standing on, or flowing through***
22 ***or adjacent to those lands. For the purposes of this section, "land" shall include railroad***
23 ***property, railroad rights-of-way, and corridors to which public access is permitted.***

24 2 Propagation of Fish and Game; Liability of Landowners; Duty of Care. Amend RSA
25 212:34, III(c) to read as follows:

26 (c) Assume responsibility for or incur liability for an injury to person or property caused
27 by any act of such person to whom permission has been granted, except as provided in paragraph V.
28 ***This shall include any person having an interest in land including the structures,***
29 ***buildings, and equipment attached to the land, including without limitation, railroad and***