



STATE OF NEW HAMPSHIRE  
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT  
DIVISION of PARKS and RECREATION  
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March 31, 2016

The Honorable Sharon Carson, Chairman  
and the Senate Judiciary Committee  
Legislative Office Building, Room 208  
Concord, NH 03301

**Re: HB 1569-FN, Relative to volunteers under the department of resources and economic development.**

Dear Chairman Carson and Members of the Committee,

Thank you for the opportunity to testify on HB 1569-FN on behalf of the Department of Resources and Economic Development, Division of Parks and Recreation. This legislation was submitted as an initiative of the State Parks System Advisory Council (Parks Council established under RSA 216-A:3-k) and the agency to address liability issues relating to volunteer organizations working with the department, in particular, the capacity of these organizations to purchase insurance to protect themselves, their organizations, and the State. We have concerns with the bill as amended by the House of Representatives.

The 10 Year Strategic Plan for our State Parks notes that "People love the Parks so much that many become the volunteers who dedicate thousands of hours of work to maintain the parks. Park staff and committed volunteers work hard to provide programming in the parks that allow and encourage park guests to see something different, participate in a new activity, or learn a new skill when they visit the parks."

The Parks Council that oversees the implementation of the Strategic Plan recommended in a report on Friends and Volunteers that "expansion of volunteer programs and opportunities will depend first on certain internal improvements. Top priorities for parks staff include clarification of legal protections such as liability coverage...."

There are a number of points we wish to make related to this legislation:

1. This legislation has no effect on individual volunteers. They are adequately protected under existing statutes and the State does not require insurance from them.
2. The State requires insurance from organizations that enter into agreements with the state, including volunteer organizations. Agreements have also required the organizations to defend and indemnify the state. This is because these are independent organizations where the individuals as officers and members of the organization have duties and obligations to the organization that individuals volunteering directly for the state do not.
3. The State does not have control over all of the activities of these independent organizations. Of the current organizations that volunteer, only about 15% of them conduct activities solely on DRED properties.

The original legislation supported by the Parks Council and agency proposed that:

1. The protections afforded to individuals, corporations and nonprofit legal entities under a Trails Bureau Statute (RSA 508:14) be extended to all organizations, not just those who are constructing, maintaining or improving trails for public recreational use.
2. Allowed the agency to purchase the liability insurance to cover volunteer organizations, and with amendment, share the cost of that insurance if agreed to by the organization.

The bill as amended by the House would require the state to defend independent organizations in the same way it does individuals. We are concerned that this would place an undue burden on the Attorney General's office for the 200-300 organizations that volunteer on state lands including all of the snowmobile and ATV clubs that already carry insurance and other organizations such as the Appalachian Mountain Club and Forest Society who are not in the same position as the small volunteer organizations do.

We would request that this language be removed and the original language amending RSA 216-A:3-h to add:

***II. Notwithstanding RSA 508:17, II, any corporation or other nonprofit legal entity that is recognized by the commissioner of the department of resources and economic development as a volunteer organization that is under the general supervision of authorized department of resources and economic development personnel, and is actually performing assigned volunteer duties or activities at a state park, forest, reservation, trail, or historic site shall not be liable for personal injury or property damage in the absence of gross negligence of willful or wonton misconduct.***

This would extend protection to all volunteers, not just for trail work, reducing the current exposure of these organizations under RSA 508:17.

With respect to the authority to purchase insurance on behalf of the volunteer organizations, we have found that the agency already has that authority under RSA 9:27. We have already initiated conversations with members of the insurance industry to determine the cost of insurance to cover the activities of these organizations when working under our supervision on state lands.

Thank you for the opportunity to testify and provide information regarding this legislation. We are available to answer questions or help to provide any additional information you might need.

Sincerely,



Philip A. Bryce  
Director

PAB/ttl

C: Jeffrey J. Rose, Commissioner

**New Hampshire Department of Resources and Economic Development-  
Division of Parks & Recreation**

**Statutes pertaining to HB 1569**

**CHAPTER 508  
LIMITATION OF ACTIONS**

**Section 508:17**

**508:17 Volunteers; Nonprofit Organizations; Liability Limited. –**

I. Any person who is a volunteer of a nonprofit organization or government entity shall be immune from civil liability in any action brought on the basis of any act or omission resulting in damage or injury to any person if:

(a) The nonprofit organization or government entity has a record indicating that the person claiming to be a volunteer is a volunteer for such organization or entity; and

(b) The volunteer was acting in good faith and within the scope of his official functions and duties with the organization; and

(c) The damage or injury was not caused by willful, wanton, or grossly negligent misconduct by the volunteer.

I-a. [Repealed.]

II. Liability of a nonprofit organization for damage or injury sustained by any one person in actions brought against the organization alleging negligence on the part of an organization volunteer is limited to \$250,000. Such limit applies in the aggregate to any and all actions to recover for damage or injury sustained by one person in a single incident or occurrence. Liability of a nonprofit organization for damage or injury sustained by any number of persons in a single incident or occurrence involving negligence on the part of an organization volunteer is limited to \$1,000,000.

III. Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization against any volunteer of such organization.

IV. Volunteer activity related to transportation or to care of the organization's premises shall be excepted from the provisions of paragraph I of this section.

V. In this section:

(a) "Damage or injury" includes physical, nonphysical, economic and noneconomic damage and property damage.

(b) "Nonprofit organization" shall include, but not be limited to, a not for profit organization, corporation, community chest, fund or foundation organized and operated exclusively for religious, cultural, charitable, scientific, recreational, literary, agricultural, or educational purposes, or to foster amateur competition in a sport formally recognized by the National Collegiate Athletic Association, and an organization exempt from taxation under section 501(c) of the Internal Revenue Code of 1986 organized or incorporated in this state or having a principal place of business in this state.

(c) "Volunteer" means an individual performing services for a nonprofit organization or government entity who does not receive compensation, other than reimbursement for expenses actually incurred for such services. In the case of volunteer athletic coaches or sports officials, such volunteers shall possess proper certification or validation of competence in the rules, procedures, practices, and programs of the athletic activity.

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**CHAPTER 216-A  
EXPANSION OF STATE PARK SYSTEM**

**Section 216-A:3-h**

**216-A:3-h Indemnification of Department of Resources and Economic Development Volunteers.** – Any person recognized by the commissioner of the department of resources and economic development as a volunteer and who is under the general supervision of authorized department of resources and economic development personnel, and is actually performing assigned volunteer duties or activities at a state park, forest, reservation, trail, or historic site, shall be considered a state employee for the purpose of defense and indemnification from civil suits under RSA 99-D.

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**CHAPTER 508  
LIMITATION OF ACTIONS**

**Section 508:14**

**508:14 Landowner Liability Limited.** –

II. Any individual, corporation, or other nonprofit legal entity, or any individual who performs services for a nonprofit entity, that constructs, maintains, or improves trails for public recreational use shall not be liable for personal injury or property damage in the absence of gross negligence or willful or wanton misconduct.

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**CHAPTER 9  
BUDGET AND APPROPRIATIONS; REVOLVING FUNDS**

**Regulation of Certain Payments and Expenditures**

**Section 9:27**

**9:27 Insurance.** – Any agency or department of the state may, with the approval of the governor and council and within the limits of its appropriation, secure casualty or liability insurance on any property owned by the state or in connection with any program or activity of the state; provided, however, that any insurance specifically required by law shall be carried.