



**To: House Education Committee**

**From: Vermont School Boards Insurance Trust**

Tim Vincent, Multi-Line Program Manager

**Subject: H.27      Date of Testimony: April 24, 2018**

The VSBIT Multi-Line Program provides risk management services and coverage to more than 80% of the public Pre-K through 12 schools in the State of Vermont. There is some proposed language in H.27 that gives us some concern.

Our concern is focused on the revised section 253(c). While we support the concept that there should be immunity for disclosures of “factually correct” information concerning misconduct, we are concerned by the language that provides immunity only for the substance of a disclosure where the school officials are acting in good faith **and** reasonably. That means that a former employee will prevail in litigation where **either** there was not good faith or where the school official failed to take reasonable steps to ascertain the truth of the matters communicated. Even if the person making disclosure was acting in good faith, the disclosure could still be actionable in a civil lawsuit if the official failed to act reasonably to determine if the information was accurate.

We expect that there would be litigation around whether the steps taken by the school officials were reasonable under the circumstances. Questions as to what constitutes reasonable efforts to determine truth will almost always be a question for a jury to decide. What is reasonable to one person is not reasonable to another.

There is a danger that the required disclosure could lead to instances of civil litigation for school officials where the former employee disputes the disclosed information, even where there is significant factual information to support the disclosure. An example of this scenario is that if a school and employee come to a separation agreement in lieu of a full investigation then it puts into question the “factually correct” aspect concerning misconduct. As a result, the former employee could file a lawsuit against the school for unsubstantiated allegations.

We encourage the legislature to consider a broader grant of immunity. For example, the statute could grant immunity where the disclosure was made in good faith. Then, the only question in the event of litigation will be whether the official genuinely believed the information disclosed could be true.

We greatly appreciate the time to outline our concerns related to proposed language in H.27.