

To: Chair Martin LaLonde, House Judiciary Committee

CC: Representative Angela Arsenault

From: Josh Hanford, Director of Intergovernmental Relations, Samantha Sheehan, Municipal Policy and Advocacy Specialist

Date: December 17, 2024

RE: Municipal Liability Cap

As we begin the new legislative biennium, the VLCT team looks forward to working in partnership with you to help Vermont's cities and towns meet the functions of today's local government and take the action needed to solve the challenges of the 21st century. Our 2025 Legislative Priorities identify actions state government could take to ensure transparency, fiscal responsibility, compliance, and equity across state and local government, **including to extend to municipal government the same protections from monetary liabilities that the legislature has enacted for the State.**

### Reasoning

- Creating a liability cap would create parity between state and municipal governments. While the majority of public services are delivered by municipal government, only state government enjoys liability protection.
- Creating a liability cap for municipalities will not affect the ability of victims of crime or civil rights violations to pursue compensation for damages.
- The absence of a liability cap is affecting the insurability of some critical public infrastructure and imperiling the ability of local government to deliver the public services that Vermonters want and need. For example, VLCT (through PACIF) offers downstream liability coverage for dams with a \$1 million limit, private insurers no longer offer these policies.
- Requiring municipalities to be financially responsible for the full value of claims will likely result in a reduction of public services overall. Issues of insurability for municipalities have halted plans for [skate parks](#) and [complicated plow routes](#) and could imperil accessibility to other public facilities such as swimming pools, sports fields, playgrounds, and pedestrian infrastructure.
- The creation of a liability cap for municipalities would save taxpayer money by moderating the cost of insurance premiums, dissuading nuisance or fraudulent claims, expediting litigation, and protecting municipalities from monetary damages that [far exceed insurance maximums](#).

### Related Legislative Actions Over Time

- In 1961, the State enacted the tort claims act with a limited waiver of immunity for certain types of tort claims, some specified defenses (including, significantly, the discretionary function exception), and caps on the amount that can be recovered. See 12 V.S.A. § 5601. Municipalities were not included within the scope of the statute.

- In, 2003 the legislature enacted 24 V.S.A. § 901a, requiring tort lawsuits against municipal employees be brought instead against the municipality, but no caps were included.
- In 2011, the legislature acted to raise the maximum liability of the State. The present cap language in the statute is: “Effective July 1, 2011, the maximum liability of the State under this section shall be \$500,000.00 to any one person and the maximum aggregate liability shall be \$2,000,000.00 to all persons arising out of each occurrence.”

### Relevant Case Law

- In *Hudson v East Montpelier*, 161 Vt. 168 (1993), the Vermont Supreme Court allowed a lawsuit against a municipal road crew employee for a tort claim that immunity barred, as against the Town, reasoning that municipal immunity applies to the municipality but not its employees.
- In *Hillerby v Colchester*, 167 Vt. 270 (1997) the Vermont Supreme Court reaffirmed municipal immunity, despite some misgivings. Justice Dooley’s “dissent” contains a cogent explanation for retaining some sort of immunity. The Court pointed out that the legislature should fix Vermont’s antiquated and contorted municipal immunity common law.

Excerpt, Justice Dooley: *“Not only were the governmental programs not designed to assume a personal duty to every potential beneficiary, particularly in an era of scarce public resources where need and demand are inevitably greater than the capacity to meet them, but the liability consequences of such a policy would be massive, threatening the ability of government to respond at all to health and safety threats. It would be wiser to spend any additional resources on making prevention programs work better for the benefit of all citizens rather than responding to tort claims.”*

- In *Morway v Colchester* the Vermont Supreme Court again allowed a claim against a municipal plow truck driver, but with another request by the Court for the legislature to act. Thereafter, in 2003 the legislature enacted 24 V.S.A. § 901a (as mentioned above).

### VLCT Recommendation

VLCT recommends that relevant state statute be amended to set a liability cap equal to that of the cap set for State Government. Furthermore, it is VLCT’s position that the right to defense of qualified immunity, municipal immunity, and discretionary function remain. Thank you for the opportunity to share some of VLCT’s ideas with you. Please feel free to contact me with any questions or follow-up on next steps.

### Attachments

Recommended language, 24 V.S.A. § 901, 24 V.S.A. § 901a, 24 V.S.A. § 5602

Donald Hillerby v. Town of Colchester, Citation, Supreme Court of Vermont. Filed November 26, 1997