

Senate Commerce Committee

Aaron Jones 271-2609

HB 467-FN, relative to public playground accessibility.

Hearing Date: March 21, 2023

Time Opened: 9:17 a.m.

Time Closed: 10:16 a.m.

Members of the Committee Present: Senators Ricciardi, Innis, Soucy and Chandley

Members of the Committee Absent : Senator Gannon

Bill Analysis: This bill requires public playgrounds in use on or after January 1, 2024 to have solid rubber or rubber composite surfacing for accessibility to the playground and each piece of equipment.

Sponsors:

Rep. Kuttab
Sen. Abbas

Rep. Grossman

Rep. McMahon

Who supports the bill: 85 individuals were in support. Full sign in sheets are available upon request by contacting the Legislative Aide, Aaron Jones (aaron.jones@leg.state.nh.us).

Who opposes the bill: Ben Crowell (Durgin & Crowell Lumber Company), Jasen Stock (NH Timberland Owners Association), Aubrey Freedman, Roy Schweiker, Curtis Howland

Who is neutral on the bill: Natch Greyes (NH Municipal Association)

Summary of testimony presented in support:

Representative Katelyn Kuttab

- This bill was filed at the request of a constituent who could not move their mobility device on a playground.
- This bill would require playgrounds constructed for use on or after January 1, 2024, to be ADA accessible. Further, it would define what materials are suitable for New Hampshire's climate. If those materials are not available, similar surfacing would be allowed.
- Accessibility and ATSM standards are defined as someone in a wheelchair exerting force that is no more than 155 pounds at a 7 percent incline.

- When engineered wood fibers are used, they can meet accessibility requirements until they are no longer compacted or flattened.
- Representative Kuttub was unaware of any towns with staff that raked playgrounds every few hours.
- In Exeter, they raked the existing material flat, and they placed interlocking rubber mats over it to create a solid surface. Representative Kuttub said this had been an economical solution.
- **Senator Ricciardi** asked if more laws were needed to fix the problem, or if inspectors needed more training to ensure developers complied with existing state and federal law.
 - **Representative Kuttub** said the issues were the materials being used, and this would define what would work. When a playground is delivered, it has met accessibility standards at that time. Wheelchairs can sink into the materials, however, when they are no longer flat. Existing law can be ambiguous, yet playgrounds need to remain accessible. If alternate materials are available, they can be used as well.

Bodhi Bhattarai and Dee Dustin Bhattarai

- Despite one-in-four people having a disability, there are no accessible public or school playgrounds in the Concord area. Mrs. Bhattarai said the nearest playground is in Nashua.
- Bodhi, who is in third grade, cannot play with his friends because the playground uses woodchips, which are not accessible.

Audrey Gerkin, Council Administrator, Council for Youths with Chronic Conditions

- Last year, the Council for Youths with Chronic Conditions (CYCC) collaborated with JSI to conduct an assessment. Feelings of isolation and exclusion were significant issues experienced by families caring for children with chronic diseases. Their findings emphasized the importance of access to public spaces, including public playgrounds.
- Solid rubber or rubber composite surfacing would allow for children and caregivers with disabilities and their peers to interact.
- Ms. Gerkin said they supported universal designs, which do not exclude anyone.

Joseph Pappalardo

- Representative Kuttaub introduced this legislation on behalf of Mr. Pappalardo's daughter who has cerebral palsy.
- Mr. Pappalardo said societal misunderstanding, not the disability itself, is the most challenging aspect facing those who are disabled.
- Inclusive playgrounds are built for everyone, and they break down barriers by allowing neurotypical children and those with disabilities to build connections.
- Without closing existing playgrounds, accessibility would become the norm as new facilities are built.

Senator Daryl Abbas

- Reasonable accommodations are the current standard under ADA. Senator Abbas said what is considered reasonable has been ambiguous; however, this bill would address this problem.
- Since playgrounds are built with taxpayer money, Senator Abbas said they should be accessible to everyone.

Vanessa Blais, on behalf of Kathy Bates

- Ms. Bates stated that all children should have safe and accessible access to public playgrounds.
- Ms. Bates, who is in a wheelchair, could not access the playground when she supervised it because woodchips were used. In one instance, a student fell off playground equipment and Ms. Bates was unable to help him.
- Ms. Bates said public playgrounds with solid rubber or rubber composite surfacing would be more accessible and safer.
- Ms. Bates said many lifelong friendships are developed on playgrounds. If children with disabilities have no access, then they might not have the ability to develop those relationships.

Jennifer Bertrand

- Homeowners, who pay taxes, should have access to public spaces in their communities.
- There are no playgrounds in Mont Vernon or Amherst that are accessible because they use wood fiber (EWF) materials. Nashua has a playground with a hard surface area from the entrance to each piece of equipment.
- If installed correctly, EWFs can meet basic accessibility guidelines; however, maintenance can be costly for towns.
- According to Lines 7 through 9, playgrounds must “include accessible pathways made from resilient rubber or a urethane rubber composite surfacing, or a similar resilient solid surface material that is not a loose fill or aggregate, beginning at the entrance of the playground, continuing to each piece of playground equipment, and extending to the playground exit.”
- Under these provisions, towns could use EWFs in combination with other materials if they have the maintenance budget to do so. Given the climate of the Northeast, however, EWFs can be difficult to maintain to ensure accessibility.
- This bill would provide municipalities with sufficient flexibility to create and design playgrounds that are best for them.
- Ms. Bertrand said the intent of this bill had been consistent with the spirit of the ADA.
- Ms. Bertrand encouraged the removal of unnecessary barriers to reduce maintenance costs as well as to ensure everyone had a sense of belonging.

Karen Livernois, Council Chair, Council for Youths with Chronic Conditions

- Ms. Livernois said her child's wheelchair was unable to go across the material at her local playground. According to the Planning Board, the playground had been ADA compliant based on the materials that were used.
- Ms. Livernois said it should not be about compliance; instead, it should be about access.
- Those who push, use, or have access to a wheelchair know a surface must be solid.

Summary of testimony presented in opposition:

Ben Crowell, Durgin & Crowell Lumber Company

- Mr. Crowell opposed this bill; however, he supported access for everyone.
- They manufacture engineered wood fiber from sawmill chips, which are certified under ADA guidelines.
- Safety factors must be considered, and Mr. Crowell said their product has been rated for a 20-foot fall.
- Mr. Crowell reiterated that their product was ADA compliant, sustainably harvested, SFI certified, and naturally made in the state.
- **Senator Chandley** said the concerns raised were about access to equipment. She asked if their product was underneath the equipment.
 - **Mr. Crowell** responded yes.
- **Senator Chandley** said the Committee heard this product did not provide the necessary surface to allow assisted mobility devices to move. She asked if this had been Mr. Crowell's experience.
 - **Mr. Crowell** said their product is compacted and wheelchairs are run across it when it is tested for compliance. The issue seemed to be about maintenance, not certification. If playgrounds were maintained properly, then Mr. Crowell said wheelchairs should be able to wheel over it.
- **Senator Chandley** asked what his recommendation would be if it were maintenance issues that were impeding assisted mobility devices.
 - **Mr. Crowell** responded raking and flattening; however, he was not an expert on this.

Jasen Stock, Executive Director, NH Timberland Owners Association

- Mr. Stock said the language of the bill was prescriptive.
- Many Association members produce engineered wood fiber products. When they are installed properly, ADA accessibility standards are met.
- Under this bill, the use of any wood fiber products would be precluded.
- On Lines 4 and 5, it states, "any playground constructed for use on or after January 1, 2024". To be compliant, Mr. Stock believed this would require all

existing playgrounds to have a surface made of resilient rubber, urethane rubber composite, or a similar resilient solid surface material.

- Mr. Stock believed this bill should not be as prescriptive; instead, it should enable the use of ADA approved and accessible materials. Businesses are producing materials, such as wood fiber, that are manufactured, engineered, and designed for this specific use.
- Mr. Stock said there was a benefit of using natural products, which do not have to be placed in a landfill after a certain period.
- While Mr. Stock supported the intent of this bill, he reiterated that the prescriptive language would have ramifications. If the bill were amended, he said they would be happy to participate in that process.
- **Senator Chandley** asked if removing “for use” would resolve one of their concerns.
 - **Mr. Stock** agreed it would be clearer and more concise if it read, “any playground constructed after January 1, 2024”. It did carry the implication, however, that no wood fiber could be used.
- **Senator Chandley** asked if the wood product met the definition of resilient solid surface material.
 - **Mr. Stock** said he did not know. When the wood fiber is brought in, it is wettened and compacted. It is not a solid surface because water can go through it; however, a wheelchair can roll across it. He reiterated that the prescriptive language was problematic.
- **Senator Ricciardi** said the Committee heard testimony that young children cannot access playgrounds, even though certain products are ADA approved.
 - **Mr. Stock** responded their products were different from bark mulch or wood chips; thus, he wondered if they were comparing apples to apples. Engineered wood fiber products are ground down, sized, and compacted when installed.

Aubrey Freedman

- This bill would be a one size fits all solution where each town would have to design their playgrounds the same way.
- Since each town must pay for it, Mr. Freedman said they should decide how they want to do it.
- There are different products, such as engineered wood fiber, grass, play sand, and artificial turf, which can be used on playgrounds.
- Rubber can be costly, toxic, burning hot, and last two to three years if it is not properly installed.
- Mr. Freedman understood the intent was for new playgrounds; however, it had been confusing since it stated, “constructed for use on or after”. If all playgrounds had to be changed, Mr. Freedman said it would be costly and taxes would increase.

Roy Schweiker

- The removal of “for use” would ensure this bill would be applicable to future construction.
- While it had been stated that this bill did not have a fiscal impact, Mr. Schweiker said playgrounds would be required to have a more expensive product that needed more maintenance.
- If the bill were amended, Mr. Schweiker suggested a functional specification or other prescriptive specification that playgrounds would be built and maintained for wheelchairs.
- If a municipality wanted to use wood products, it should be built into the cost of their operations.
- Instead of tearing out existing materials, Mr. Schweiker suggested that schools could purchase all terrain wheelchairs to allow students to access playgrounds.

Neutral Information Presented:

Natch Greyes, NH Municipal Association

- This bill would have the same applicability as the ADA, and it would apply to newly constructed or substantially rehabilitated playgrounds.
- This bill was not a new mandate, and it did not violate Article 28-a. Instead, this bill would clarify the types of materials that are accessible as designated by the ADA.
- Some communities have installed materials that were ADA compliant; however, there have been installation or maintenance issues, which have been expensive to resolve.