

TITLE XX

TRANSPORTATION

CHAPTER 231

CITIES, TOWNS AND VILLAGE DISTRICT HIGHWAYS

Liability of Municipalities

Section 231:90

231:90 Duty of Town After Notice of Insufficiency. –

I. Whenever any class IV or class V highway or bridge or sidewalk thereon in any municipality shall be insufficient, any person may give written notice of such insufficiency to one of the selectmen or highway agents of the town, or the mayor or street commissioners of the city, and a copy of said notice to the town or city clerk. The notice shall be signed and shall set forth in general terms of the location of such highway, bridge, or sidewalk and the nature of such insufficiency.

II. For purposes of this subdivision, a highway or sidewalk shall be considered "insufficient" only if:

(a) It is not passable in any safe manner by those persons or vehicles permitted on such sidewalk or highway by state law or by any more stringent local ordinance or regulation; or

(b) There exists a safety hazard which is not reasonably discoverable or reasonably avoidable by a person who is traveling upon such highway at posted speeds or upon such sidewalk, in obedience to all posted regulations, and in a manner which is reasonable and prudent as determined by the condition and state or repair of the highway or sidewalk, including any warning signs, and prevailing visibility and weather conditions.

III. A highway or sidewalk shall not, in the absence of impassability or hidden hazard as set forth in paragraph II, be considered "insufficient" merely by reason of the municipality's failure to construct, maintain or repair it to the same standard as some other highway or sidewalk, or to a level of service commensurate with its current level of public use.

Source. 1893, 59:2, PL 82:8. RL 98:8. 1945, 188:1, part 18:9. RSA 247:9. 1981, 87:1. 1991, 385:3, eff. Jan. 1, 1992.

Section 231:91

231:91 Municipality to Act; Liability. –

I. Upon receipt of such notice of insufficiency, and unless the highway agents or street commissioners determine in good faith that no such insufficiency exists, the municipality shall immediately cause proper danger signals to be placed to warn persons by day or night of such insufficiency, and shall, within 72 hours thereafter, develop a plan for repairing such highway, bridge, or sidewalk and shall implement such plan in good faith and with reasonable dispatch until the highway, bridge, or sidewalk is no longer insufficient, as defined by RSA 231:90, II.

II. If the municipality fails to act as set forth in paragraph I, it shall be liable in damages for all personal injury or property damage proximately caused by the insufficiency identified in the notice, subject to the liability limits under RSA 507-B:4.

Source. 1893, 59:2, PL 82:9. RL 98:9. 1945, 188:1, part 18:10. RSA 247:10. 1981, 87:1. 1991, 385:4, eff. Jan. 1, 1992.

Section 231:92

231:92 Liability of Municipalities; Standard of Care. –

I. A municipality shall not be held liable for damages in an action to recover for personal injury or property damage arising out of its construction, maintenance, or repair of public highways and sidewalks constructed thereupon unless such injury or damage was caused by an insufficiency, as defined by RSA 231:90, and:

(a) The municipality received a written notice of such insufficiency as set forth in RSA 231:90, but failed to act as provided by RSA 231:91; or

(b) The selectmen, mayor or other chief executive official of the municipality, the town or city clerk, any on-duty police or fire personnel, or municipal officers responsible for maintenance and repair of highways, bridges, or sidewalks thereon had actual notice or knowledge of such insufficiency, by means other than written notice pursuant to RSA 231:90, and were grossly negligent or exercised bad faith in responding or failing to respond to such actual knowledge; or

(c) The condition constituting the insufficiency was created by an intentional act of a municipal officer or employee acting in the scope of his official duty while in the course of his employment, acting with gross negligence, or with reckless disregard of the hazard.

II. Any action to recover damages for bodily injury, personal injury or property damage arising out of municipal construction, repair or maintenance of its public highways or sidewalks constructed on such highways shall be dismissed unless the complaint describes with particularity the means by which the municipality received actual notice of the alleged insufficiency, or the intentional act which created the alleged insufficiency.

III. The acceptance or layout of a private road as a public highway shall not be construed to confer upon the municipality any notice of, or liability for, insufficiencies or defects which arose or were created prior to such layout or acceptance.

IV. The setting of construction, repair, or maintenance standards or levels of service for highways and sidewalks by municipal officials with responsibility therefor, whether accomplished formally or informally, shall be deemed a discretionary, policy function for which the municipality shall not be held liable in the absence of malice or bad faith.

Source. RS 57:1. CS 61:1, 7. GS 69:1, 2. GL 75:1, 2. PS 76:1. 1893, 59:1. 1915, 48:1. 1921, 107:1. 1925, 52:2, 4. PL 89:1. 1935, 118:1. RL 105:1. 1945, 188:1, part 18:17. RSA 247:17. 1981, 87:1. 1991, 385:5, eff. Jan. 1, 1992.

Section 231:92-a

231:92-a Snow, Ice and Other Weather Hazards. – Notwithstanding RSA 231:90-92, a municipality or school district shall not be held liable for damages arising from insufficiencies or hazards on public highways, bridges, or sidewalks, even if it has actual notice or knowledge of them, when such hazards are caused solely by snow, ice, or other inclement weather, and the municipality's or school district's failure or delay in removing or mitigating such hazards is the result of its implementation, absent gross negligence or reckless disregard of the hazard, of a winter or inclement weather maintenance policy or set of priorities adopted in good faith by the officials responsible for such policy; and all municipal or school district employees and officials shall be presumed to be acting pursuant to such a policy or set of priorities, in the absence of proof to the contrary.

Source. 1991, 385:6. 1998, 249:2, eff. Jan. 1, 1999.

Section 231:94

231:94 Sufficiency of Warning. – Sufficient warning of dangerous embankments shall be held to have been given whenever the railing, post, or other warning signs or structures conform to the standards prescribed by the commissioner of transportation and have been approved by him in the manner hereinafter provided.

Source. 1925, 52:2. PL 89:2. 1935, 118:2. RL 105:2. 1945, 188:1, part 18:19. RSA 247:19. 1981, 87:1. 1985, 402:6, I(b)(3).

Section 231:95

231:95 Approval of Railings. – The department of transportation shall examine all railings, posts, or other warning signs or structures erected by a town upon any highway, upon the written request of such town, and if the same are approved as standard, a record of such request, of the examination and approval, and of the locations shall be made and kept in the office of the department. A copy of such records shall be filed forthwith in the office of the town clerk. When certified by the commissioner of transportation, a copy shall be received by all courts as evidence of the sufficiency of such railings, posts, or other warning signs or structures for a period of 3 years after such record has been made.

Source. 1925, 52:3. PL 89:3. 1935, 118:3. RL 105:3. 1945, 188:1, part 18:20. 1950, 5:1, part 9:1, par. 2. RSA 247:20. 1981, 87:1. 1985, 402:6, I(a)(3), (b)(3).

Sidewalks

Section 231:113

231:113 Repair and Maintenance. – The highway agent, under the direction of the mayor and aldermen of a city or the selectmen of a town shall have charge of the repair of all sidewalks therein constructed under the provisions of this subdivision, and such sidewalks shall be maintained, repaired and reconstructed by the city or town in which they are located without further assessment to the abutting owner.

Source. 1945, 188:1, part 22:3. RSA 252:3. 1981, 87:1, eff. April 20, 1981.