

Revised Statutes Annotated of the State of New Hampshire [Currentness](#)

Title LV. Proceedings in Special Cases

→ [Chapter 541-B. Claims Against the State \(Refs & Annos\)](#)

→ **541-B:1 Definitions.**

In this chapter:

I. “Agency” means all departments, boards, offices, commissions, institutions, other instrumentalities of state government, including but not limited to the Pease development authority, division of ports and harbors, the New Hampshire housing finance authority, the New Hampshire energy authority, the community college system of New Hampshire, and the Pease development authority, and the general court, including any official or employee of same when acting in the scope of his or her elected or appointed capacity, but excluding political subdivisions of the state.

II. “Board” means the board of claims established by [RSA 541-B:2](#).

II-a. “Claim” means any request for monetary relief for either:

(a) Bodily injury, personal injury, death or property damages caused by the failure of the state or state officers, trustees, officials, employees, or members of the general court to follow the appropriate standard of care when that duty was owed to the person making the claim, including any right of action for money damages which either expressly or by implication arises from any law, unless another remedy for such claim is expressly provided by law; or

(b) Property damages suffered by a state employee or official during the performance of that employee's or official's duties while on state business where compensation is appropriate under principles of equity and good conscience.

III. “Claimant” means any person who files a claim pursuant to this chapter.

IV. [Repealed.]

V. “Person” means any individual, partnership, association, corporation or political subdivision.

VI. “Political subdivision” means any village district, school district, town, city, county or unincorporated place in the state.

541-B:2 Board Established.

There is hereby organized, constituted and established a 5 member board of claims for the state.

541-B:3 Appointment and Qualifications of Board Members.

I. The governor shall appoint 2 competent persons to serve as board members; preferably each shall be a member of the New Hampshire Bar Association.

II. The chief justice of the New Hampshire supreme court shall appoint the chairman of the board. The chairman shall be a judicial referee, if one is available, but if not, then the chairman shall be a member of the New Hampshire Bar Association.

III. The president of the senate shall appoint one member of the senate, and the speaker of the house of representatives shall appoint one member of the house of representatives, to serve as board members.

IV. All members shall be residents of the state and if any member ceases to be a resident of this state a vacancy is created.

541-B:4 Term.

I. Each board member except the legislative members shall serve a 6-year term. The 2 legislative members shall serve a term which is co-terminous with their terms as legislators; provided, however, that at the expiration of a term of 6 years, a legislative member may be reappointed to serve as a board member for an additional 6-year term.

II. (a) In the event of a vacancy on said board for any reason which is created by the 2 members appointed pursuant to [RSA 541-B:3, I](#), the provisions of [RSA 21:33-a](#) shall apply.

(b) If the position of chairman of the board becomes vacant, the provisions of [RSA 21:33-a](#) shall apply except that the appointment shall be by the chief justice of the New Hampshire supreme court.

(c) A vacancy on the board for any reason which is created by either of the 2 legislative members appointed pursuant to [RSA 541-B:3, III](#), shall be filled by the president of the senate or the speaker of the house of representatives, as appropriate, pursuant to [RSA 541-B:3, III](#).

541-B:5 Disqualification of Board Member.

A board member may disqualify himself relative to any matter before the board or if the board votes that any

member has or may have a conflict of interest in any matter before the board, that member shall be disqualified to sit as a board member on that particular matter. In the event of any disqualification, the governor by the authority of [RSA 21:33-a](#), the chief justice of the supreme court by the authority of [RSA 541-B:3, II](#), the president of the senate or the speaker of the house of representatives, as appropriate, by the authority of [RSA 541-B:3, III](#), shall appoint an interim member to the board to serve only as to that matter. The interim member shall have the same qualifications as the disqualified member.

541-B:6 Removal.

The governor may at any time remove a board member for cause, including malfeasance, misfeasance, inefficiency in office or incapacity or unfitness to perform his duties. The attorney general or chief justice of the superior court may petition for such removal, setting forth the grounds and reasons therefor. No board member shall be removed without a public hearing before the governor and council upon such petition, giving the member due notice thereof not less than 30 days before the hearing.

541-B:7 Compensation.

Each non-legislative member shall not receive more than \$65 and his reasonable expenses in each quarter; the legislative board members shall be entitled to legislative mileage only. Any interim board member appointed shall be compensated in like manner while serving on the board.

541-B:8 Quorum.

A majority of the board shall constitute a quorum to conduct hearings and a vote of at least a majority of the quorum is required to adopt and approve any matter considered by it.

541-B:9 Jurisdiction.

I. Claims under this chapter shall be brought solely in accordance with the provisions of this chapter.

II. The board shall have original and exclusive jurisdiction to investigate, conduct hearings and make decisions, and render or deny awards on all claims under this chapter not exceeding \$5,000 against any agency, except those claims arising under workers' compensation, unemployment compensation, eminent domain proceedings, [RSA 110-B:73](#), [RSA 207:23-a](#), [RSA 228:29](#), and [RSA 491:8](#).

III. The board shall have concurrent jurisdiction to investigate, conduct hearings and make decisions, and render or deny awards, except those claims arising under workers' compensation, unemployment compensation, eminent domain proceedings, [RSA 110-B:73](#), [RSA 207:22-25](#), [RSA 228:29](#) and [RSA 491:8](#), with the superior court on all claims in excess of \$5,000, but not exceeding \$50,000, against any agency.

IV. Except as otherwise provided, the superior court shall have original and exclusive jurisdiction of all claims in excess of \$50,000 against any agency.

V. Notwithstanding paragraph II, the department of corrections shall have exclusive jurisdiction to investigate, conduct hearings and make decisions, and render or deny awards on claims against the department of corrections when the amount involved is less than \$500.

V-a. Notwithstanding paragraph II, the department of health and human services shall have exclusive jurisdiction to investigate, conduct hearings and make decisions, and render or deny awards on claims against New Hampshire hospital when the amount involved is less than \$500.

VI. The board of claims may authorize payment of uncontested claims based upon a review of the record, without holding a hearing.

541-B:9-a Claims Filed Against the State and Its Agent.

When a claim filed pursuant to this chapter is against both the state and an agent, official or employee of the state, the court shall determine whether the state is responsible for the actions of the agent, employee or official. If the court determines that the state is responsible for the actions of the agent, employee or official; the agent, employee or official shall be dismissed as a defendant and the plaintiff shall proceed solely against the state.

541-B:10 Powers and Duties of the Board.

I. The board shall have the power to adopt and amend all rules of procedure not inconsistent with the constitution or laws of the state, which reasonably may be necessary for the proper performance of its duties and the regulation of the proceedings before it.

II. The board shall not be bound by common law or statutory rules of evidence, but may admit all testimony having a reasonable probative value. It may exclude evidence which is in the opinion of the board immaterial, irrelevant or unduly repetitious.

III. The board may subpoena witnesses and compel their attendance, and also may require the production of books, papers and documents. Any member of the board may administer oaths or affirmations to witnesses appearing before it. Any person failing or refusing to obey any subpoena or order of the board may be proceeded against in the same manner as for refusal to obey any other subpoena.

IV. The findings and recommendations of the board or any payment of a claim authorized by said board shall only be subject to a judicial appeal by the petitioner in accordance with RSA 541. The board may by unanimous action order a rehearing on any matter before it, if in its opinion there are sufficient equitable reasons on

behalf of any party to the proceedings so that a rehearing should be granted; provided, however, no rehearing on any matter shall be permitted after the board has authorized a payment of a claim.

V. The board shall adopt and have an official seal.

541-B:11 Procedure.

The procedure for the filing and adjudication of claims is as follows:

I. The claimant shall first file the claim in writing with the agency involved.

II. When a claim has been filed with any agency, the head of the agency shall make or cause to be made a preliminary investigation and provide the attorney general with the results of such investigation.

III. Any person initiating a claim with the board under the provisions of [RSA 541-B:9](#), II or III shall file the claim with the secretary of state, who shall forward the claim to the board.

IV. The secretary of state shall notify the agency, the attorney general, and the claimant of the next scheduled quarterly meeting of the board and of the pertinent information as to when the claim has been scheduled for a hearing. The claimant, attorney general, and agency shall have at least 10 days' written notice of the date, time and place of the hearing.

V. When a claim is forwarded to the board by the secretary of state, the board shall schedule such claim for a hearing no later than the next succeeding quarterly meeting of the board, if the board has met in the current quarter or not enough time is left within said quarter to comply with the notice required pursuant to paragraph IV. Upon the request of any party, the board may continue any claim until a succeeding quarterly meeting in order that the party may perform necessary and adequate discovery.

VI. The claimant may represent himself or he may be represented by an attorney. The claimant may subpoena witnesses and compel their attendance, and also may require the production of books, papers and documents. The attorney general shall represent the agency.

VII. All hearings before the board shall be subject to the provisions of [RSA 91-A](#).

541-B:11-a Annual Report.

The secretary of state shall provide annually to the risk management unit a copy of the annual report for the board.

541-B:12 Recommendations to General Court.

[Repealed 1985, 412:15, II, eff. July 3, 1985.]

541-B:13 Payment of Claims.

Whenever the board by majority vote finds that payment to a claimant is justified, or a judgment by the superior court becomes final, the governor shall draw his warrant for said payment out of any money in the treasury not otherwise appropriated, and said sums are hereby appropriated.

541-B:14 Limitation on Action and Claims.

I. All claims arising out of any single incident against any agency for damages in tort actions shall be limited to an award not to exceed \$475,000 per claimant and \$3,750,000 per any single incident, or the proceeds from any insurance policy procured pursuant to RSA 507-B, whichever amount is greater; except that no claim for punitive damages may be awarded under this chapter. The limits applicable to any action shall be the limits in effect at the time of the judgment or stipulated settlement.

II. If a claim is filed against the state for time unjustly served in the state prison when a person is found to be innocent of the crime for which he was convicted, such a claim shall be limited to an award not to exceed \$20,000.

III. The payment of interest shall be granted on any award authorized under this chapter at the rate provided in [RSA 336:1](#) in the same manner as is provided for in civil actions generally.

IV. Any claim submitted under this chapter shall be brought within 3 years of the date of the alleged bodily injury, personal injury or property damage or the wrongful death resulting from bodily injury. As a condition precedent to commencement of the action, the agency shall be provided written notice within 180 days after the time of the injury or damage as to the date, time, and location the injury or damage occurred. The lack of written notice shall not bar a claim unless the agency can show by a preponderance of the evidence that its ability to defend against the action was substantially prejudiced thereby. Such notification may be made either by the claimant or an appropriate representative of the claimant.

541-B:15 Claimants' Rights Against Others.

The adjudication by the board or the superior court on any claim before it shall not deprive the claimant of any other legal rights he may have against another party.

541-B:16 Settlement.

Any payment made pursuant to this chapter shall be in full settlement of any liability on behalf of the agency which was subject to the claim and no further action may be instituted in any court of law for recovery of damages against that agency on any matter arising out of that particular claim.

541-B:17 Fees.

The board is authorized to establish reasonable fees not to exceed any comparable fees authorized for the superior court for the filing of claims, providing copies of the proceedings, transcripts or records or other documents which may be required by the board.

541-B:18 Attorneys' Fees.

No attorney representing a claimant shall charge or collect fees for legal services rendered to the claimant unless the fees have been approved by the board or the superior court, as the case may be. In determining the amount of allowable fees, the board or the superior court shall consider, among other things, the nature, length, and complexity of the services performed, the usual and customary charge for work of like kind, and the benefits resulting to the claimant as a result of the legal services performed.

541-B:19 Exceptions.

I. Without otherwise limiting or defining the sovereign immunity of the state and its agencies, the provisions of this chapter shall not apply to:

- (a) Any claim which is based upon the exercise of a legislative or judicial function.
- (b) Any claim based upon an act or omission of a state officer, employee, or official when such officer, employee, or official is exercising due care in the execution of any statute or any rule of a state agency.
- (c) Any claim based upon the exercise or performance or the failure to exercise or perform a discretionary executive or planning function or duty on the part of the state or any state agency or a state officer, employee, or official acting within the scope of his office or employment.
- (d) Any claim arising out of an intentional tort, including assault, battery, false imprisonment, false arrest, intentional mental distress, malicious prosecution, malicious abuse of process, libel, slander, misrepresentation, deceit, invasion of privacy, interference with advantageous relations, or interference with contractual relations, provided that the employee whose conduct gives rise to the claim reasonably believes, at the time of the acts or omissions complained of, that his conduct was lawful, and provided further that the acts complained of were within the scope of official duties of the employee for the state.

541-B:20 Right to Jury Trial.

In any action in the superior court pursuant to this chapter there shall be a right to a jury trial and the action shall be tried to a justice of the superior court in the ordinary course.

541-B:21 Claims Arising From the Clinical Services Provided to the Department of Health and Human Services.

I. Without otherwise limiting or defining the sovereign immunity of the state and its agencies, this chapter shall apply to all claims against any nonprofit entity, or any employee, trustee, or director of such nonprofit entity when acting in the scope of such person's elected or appointed capacity, providing clinical services in accordance with any contract entered into by the department of health and human services for the clinical operation and administration of the New Hampshire hospital pursuant to [RSA 135-C:3](#) and [RSA 135-C:4](#) or, at the discretion of the commissioner of the department of health and human services, any other public health or clinical services provided to the department.

II. The limitations on awards provided in [RSA 541-B:14](#) shall not be increased by the proceeds from any insurance policy procured by a nonprofit entity, or any employee of such entity, included under [RSA 541-B:21](#), I.

III. This section shall apply only to claims arising out of incidents occurring on or after July 1, 1988.

541-B:21-a Claims Arising From the Clinical Services Provided to the Department of Corrections.

I. Without otherwise limiting or defining the sovereign immunity of the state and its agencies, this chapter shall apply to all claims against any nonprofit entity, or any employee, trustee, or director of such nonprofit entity when acting in the scope of such person's elected or appointed capacity, providing clinical services of psychiatrists, other medical doctors, or psychiatric/mental health nurse practitioners in accordance with any contract limited to such services entered into by the department of corrections.

II. The limitations on awards provided in [RSA 541-B:14](#) shall not be increased by the proceeds from any insurance policy procured by a nonprofit entity, or any employee of such entity, included under [RSA 541-B:21-a](#), I.

III. This section shall apply only to claims arising out of incidents occurring after the effective date of this section.

541-B:22 Oversight Committee for Claims Arising From the Clinical Operation and Administration of the New Hampshire Hospital.

[Repealed 1995, 10:16, VIII, eff. April 12, 1995.]

541-B:23 Oversight Committee for Claims Arising From the Clinical Operation and Administration of the New Hampshire Hospital and Clinical Services Provided to the Department of Corrections.

I. There is hereby established a legislative oversight committee to review claims arising under [RSA 541-B:21](#), [RSA 541-B:21-a](#), [RSA 99-D:8](#), IV, and [RSA 99-D:9](#), III. The committee members shall be as follows:

(a) Two members of the house of representatives, appointed by the speaker of the house.

(b) Two members of the senate, appointed by the senate president.

II. The first-named house member of the committee shall be chairperson.

III. The committee shall report its findings to the general court 6 months prior to the awarding of any contract described in [RSA 541-B:21](#), I or [RSA 541-B:21-a](#), I.

IV. The members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

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