HB 1670-FN - AS INTRODUCED

2018 SESSION

18-2148
08/10

HOUSE BILL ***1670-FN***

AN ACT relative to bonds for public employees.

SPONSORS: Rep. Marple, Merr. 24; Rep. Comeau, Carr. 5; Rep. Howard, Belk. 8

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill permits certain inhabitants to have access to bonds issued to indemnify public and municipal employees and gives the bonding company an equitable remedy of subrogation. This bill also repeals the board of claims.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

18-2148
08/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT relative to bonds for public employees.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Section; Officials and Employees Bonds; Subrogation. Amend RSA 93-B by inserting after section 1-a the following new section:

93-B:1-b Subrogation.

I. Any inhabitant, as defined by Article 30 of the Constitution of New Hampshire, who is injured or damaged as a result of the failure of the officers, clerks, and employees covered under RSA 93-B:1 to perform their duties, or through fraudulent acts or omissions committed by such public servants, shall have access to all bonds issued to indemnify against such losses. A public servant shall be responsible for paying for his or her bond.

II. Upon investigation and payment of any claim to the damaged party, the bonding company shall have a full equitable remedy of subrogation.

2 New Section; Bonds of County Officers; Subrogation. Amend RSA 27 by inserting after section 5 the following new section:

27:5-a Subrogation.

I. Any inhabitant, as defined by Article 30 of the Constitution of New Hampshire, who is injured or damaged as a result of the failure of the officers and employees covered under this chapter to perform their duties, or through fraudulent acts or omissions committed by such public servants, shall have access to all bonds issued to indemnify against such losses. A public servant shall be responsible for paying for his or her bond.

II. Upon investigation and payment of any claim to the damaged party, the bonding company shall have a full equitable remedy of subrogation.

3 New Section; Town Officers; Surety Bond; Subrogation. Amend RSA 41 by inserting after section 6 the following new section:

41:6-a Subrogation.

I. Any inhabitant, as defined by Article 30 of the Constitution of New Hampshire, who is injured or damaged as a result of the failure of the officers, clerks, and employees covered under RSA 41:6 to perform their duties, or through fraudulent acts or omissions committed by such public servants, shall have access to all bonds issued to indemnify against such losses and shall have a right of subrogation against such officers, clerks, and employees. A public servant shall be responsible for paying for his or her bond.

II. Upon investigation and payment of any claim to the damaged party, the bonding company shall have a full equitable remedy of subrogation.

4 Board of Claims; Reference Removed. Amend RSA 99-D:2-a to read as follows:

99-D:2-a Official Duty Defined. For the purposes of RSA 99-D:2, the term "official duty" shall, in the case of a legislator, mean any duty or action taken in committee or in sessions of the general court or in such other forum where the legislator appears at the request of the house, senate or presiding officer of either body. It shall also include any other act for which immunity is granted [~~under the provisions of RSA 541-B:19~~]. Nothing in this section shall be construed to waive any immunity applicable to the legislator or the actions complained of, [~~including those set forth in RSA 541-B:19,~~] and all other provisions of RSA 99-D:2 shall apply.

5 Board of Claims; Reference Removed. Amend RSA 106-L:4 to read as follows:

106-L:4 Executive Branch Jurisdiction. The police standards and training council is an executive branch council. The council, the director, and employees hired by the director performing the functions required by this chapter shall be subject to RSA 7:8[~~, RSA 541-B,~~] and RSA 99-D, and contracts by them shall be subject to attorney general review and review and approval by the governor and executive council.

6 Board of Claims; Reference Removed. Amend RSA 230:79, II to read as follows:

II. If the department of transportation 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 541-B:14~~].

7 Repeal. RSA 541-B, relative to the board of claims, is repealed.

8 Effective Date. This act shall take effect 60 days after its passage.

LBAO
18-2148
11/8/17

HB 1670-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to bonds for public employees.

FISCAL IMPACT: [X] State [X] County [X] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**
Appropriation	$0	$0	$0	$0
Revenue	$0	$0	$0	$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	[X] General	[ ] Education	[ ] Highway	[ ] Other

COUNTY:

Revenue	$0	$0	$0	$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

LOCAL:

Revenue	$0	$0	$0	$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill permits inhabitants, as defined in Article 30 of the New Hampshire Constitution, to pursue compensation when such person is injured as a result of the failure of officers, clerks or employees of the State, counties or municipalities to perform their duties, or through fraudulent acts or omissions of these public servants. Inhabitants may file claims for compensation directly with the bondholder. Public servants shall be responsible for paying for their bonds. Bonding companies are granted full equitable remedy of subrogation. The Board of Claims, RSA 541-B is also repealed.

The Department of Administrative Services states the bond maintained by the State currently pursuant to RSA 93-B provides for first party coverage, payable only to the State, for certain financial losses suffered by the State. This bill would require the State to purchase a bond to cover injuries to inhabitants resulting from the failure of State officials to perform duties or through officials' fraudulent acts. It would be extremely difficult to estimate the cost of such an insurance bond due to the high cost associated with the expansive potential exposure the bond would be required to address. Requiring all State employees to purchase their own bond would

be a cost item subject to collective bargaining.

The New Hampshire Association of Counties indicates there is a minimal but indeterminable fiscal impact.

The New Hampshire Municipal Association states bonds issued under RSA 41:6 are intended to protect the municipality against losses caused by the official's acts or omissions. Requiring the bonds also indemnify private citizens would likely increase the costs of the bonds, resulting in an increase in municipal expenditures. The increase in cost would depend on specific facts relevant to each municipality and its bonding company, therefore it is impossible to determine the amount of the fiscal impact. There is no effect on municipal revenues.

AGENCIES CONTACTED:

Department of Administrative Services, New Hampshire Association of Counties, and New Hampshire Municipal Association