

LEGISLATIVE COMMITTEE MINUTES

# **SB533**

# Bill as Introduced

SB 533-FN - AS INTRODUCED

2018 SESSION

18-2823  
05/04

SENATE BILL

***533-FN***

AN ACT

relative to the composition and compensation of the personnel appeals board.

SPONSORS:

Sen. Carson, Dist 14; Sen. Soucy, Dist 18; Sen. D'Allesandro, Dist 20; Sen. Gannon, Dist 23; Rep. Proulx, Hills. 44; Rep. M. McCarthy, Hills. 29

COMMITTEE:

Executive Departments and Administration

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ANALYSIS

This bill revises the membership of the personnel appeals board, increases board members' compensation, and increases the quorum for board meetings and hearings from 2 to 3 members.

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Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears ~~[in brackets and struck through]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eighteen*

AN ACT relative to the composition and compensation of the personnel appeals board.

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

1 1 Personnel Appeals Board; Composition of Board; Compensation; Removal. RSA 21-I:45 is  
2 repealed and reenacted to read as follows:

3 21-I:45 Composition of Board; Compensation; Removal. There is hereby established a  
4 personnel appeals board as follows:

5 I. The board shall consist of up to 5 members, not more than 3 of whom shall be from the  
6 same political party. At least 2 members of the board shall have been employed as labor relations  
7 or personnel professionals for at least 5 years. One member shall have been employed within a  
8 public personnel field of employment for at least 3 years. At least 2 members shall be attorneys  
9 licensed to practice in the state of New Hampshire and experienced in the conduct of adjudicative  
10 hearings and decision writing. Each member shall be appointed by the governor with the consent of  
11 the council for a term of 3 years and a person appointed to fill a vacancy shall be appointed for the  
12 unexpired term. Each member of the board shall hold office until a successor is appointed and  
13 qualified. The governor shall designate one member as chairperson of the board. The board shall  
14 elect one member to serve as vice-chairperson. Both the chairperson and the vice-chairperson shall  
15 be attorneys and members in good standing of the New Hampshire Bar Association. No member of  
16 the board shall be employed full time in any agency of state government. Three members shall  
17 constitute a quorum to conduct hearings, deliberative sessions, and business meetings.

18 II. Members of the board shall convene in person to conduct appeal hearings and pre-  
19 hearing conferences with the parties, to deliberate on concluded cases and pending motions, and to  
20 conduct periodic business meetings associated with their duties and they shall designate one or  
21 more members to participate in legislative and regulatory matters that pertain to the board. They  
22 shall read appeal records, motions, court decisions, and other evidentiary materials outside of  
23 scheduled hearings and meetings and in preparation for them. The members shall therefore be  
24 paid a stipend of \$200 in each biweekly state payroll cycle for the work performed outside of  
25 scheduled sessions. Members of the board shall also be paid \$400 for each day devoted to the work  
26 of the board and shall be reimbursed for travel, professional development, and other business-  
27 related expenses.

28 III. Members of the board shall be removed only as provided in RSA 4:1.

29 2 Personnel Appeals Board; Powers and Duties of the Board. Amend RSA 21-I:46, II to read as  
30 follows:

31 II. The board shall meet as often as necessary to conduct its business, provided that no

SB 533-FN - AS INTRODUCED

- Page 2 -

- 1 more than 30 days shall elapse between meetings *or hearings* whenever there is any appeal
- 2 pending before the board. [~~Two~~ **Three** members of the board shall constitute a quorum.
- 3       3 Effective Date. This act shall take effect upon its passage.

**SB 533-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT relative to the composition and compensation of the personnel appeals board.

FISCAL IMPACT:  State  County  Local  None

STATE:	Estimated Increase / (Decrease)			
	FY 2019	FY 2020	FY 2021	FY 2022
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	An increase of at least \$67,600	An increase of at least \$67,600	An increase of at least \$67,600	An increase of at least \$67,600
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**METHODOLOGY:**

This bill increases the quorum requirement from 2 to 3 for the Personnel Appeals Board and increases the compensation of such members. The members of the board currently are compensated \$100 per day for each day devoted to the work of the board, but not more than \$5,000 each in any one year and are also reimbursed for necessary expenses in connection with their official duties. The bill would increase the compensation to \$400 for each day devoted to the work of the board and each board member would receive a bi-weekly stipend of \$200 plus reimbursement for travel, professional development, and other business related expenses.

The Department of Administrative Services assumes the board's activity in 2017 will be substantially similar in years 2019-2022 and estimates \$67,600 in annual increased cost to conduct board activities, excluding reimbursement for travel, professional development and other business related expenses. The DAS provided the following calculations:

	<b>FY 2017</b>	<b>FY 2017</b>
	<b>Expenditure*</b>	<b>Expenditure With</b>
		<b>Proposed Changes**</b>
	<b>\$100/Meeting</b>	<b>\$400/Meeting</b>
<b>\$200 biweekly stipend x 4 members x 26 weeks =</b>	<b>N/A</b>	<b>\$20,800</b>
<b>\$/Meeting x 4 members x 25 hearings in 2017 =</b>	<b>\$10,000</b>	<b>\$40,000</b>
<b>Additional Cost due to multiple day hearings =</b> <b>(out of 25 hearings, (1) three days and (1) two days)</b> <b>(\$/meeting x 4 members x 3 days)</b>	<b>\$1,200</b>	<b>\$4,800</b>
<b>\$/meeting x 4 members x 6 prehearings =</b>	<b>\$2,400</b>	<b>\$9,600</b>
<b>5 meetings to deliberate/remain in compliance =</b> <b>(\$/meeting x 4 members x 5)</b>	<b>\$2,000</b>	<b>\$8,000</b>
<b>TOTAL COST</b>	<b>\$15,600</b>	<b>\$83,200</b>
<b>*(FY 2017 excluding travel reimbursement)</b>		
<b>** (FY 2017 excluding travel reimbursement, professional development</b> <b>and other business related expenses)</b>		
<b>INCREASED COST = \$83,200 - \$15,600 = \$67,600 per year</b>		

**AGENCIES CONTACTED:**

Department of Administrative Services

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COMMITTEE:

Executive Departments and Administration

QTP 4-0

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**AGENCIES CONTACTED:**

Department of Administrative Services

# Amendments

Senate Finance  
March 6, 2018  
2018-0979s  
05/03



Amendment to SB 533-FN

- 1 Amend the bill by replacing section 3 with the following:
- 2
- 3 3 Effective Date. This act shall take effect July 1, 2019.

# Committee Minutes

**Senate Executive Departments and Administration Committee**  
*Deb Chroniak 271-1403*

SB 533-FN, relative to the composition and compensation of the personnel appeals board.

Hearing Date: January 31, 2018

Time Opened: 9:20 a.m.

Time Closed: 9:31 a.m.

Members of the Committee Present: Senators Reagan, Soucy, Cavanaugh and Carson

Members of the Committee Absent: Senator Gannon

**Bill Analysis:** This bill revises the membership of the personnel appeals board, increases board members' compensation, and increases the quorum for board meetings and hearings from 2 to 3 members.

**Sponsors:**

Sen. Carson  
Sen. Gannon

Sen. Soucy  
Rep. Proulx

Sen. D'Allesandro  
Rep. M. McCarthy

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**Who supports the bill:** Senator Sharon Carson, District 14; Jay Ward, State Employees Association (SEA); Attorney Norman Patenaude, Personnel Appeals Board (PAB); and, Attorney Chris Nicolopoulos, Personnel Appeals Board (PAB)

**Who opposes the bill:** No one

**Who is neutral on the bill:** No one

**Summary of testimony presented in support:**

**Senator Carson**

- This legislation changes the composition of the Personnel Appeals Board, increases membership, compensation, and quorum.
- Difficulty with the Personnel Appeals Board (PAB) in getting attorneys to serve on this board. These are necessary changes in order for the board to be successful in completing their duties.

**Attorney Norman Patenaude, Vice Chair, Personnel Appeals Board (in support)**

- Here on behalf of the board.
- Bill updates their governing statute, which has not been updated since 1988.
- Adds one member to their board, and raises the quorum requirement from two members to three members to avoid deadlocks.
- Codifies most board members have to be attorneys because of the complexity of their cases; they need to know how to conduct a hearing and interpret Supreme Court decisions.
- Supplied committee members with a copy of Fiscal Year 2017 Annual Report



which Report included these recommendations.

- Couple of situations over the last few years where there has been a continued vacancy on the board (since 2004). In 2013-14 the Personnel Appeals Board did not exist because there were no members.
- Support the modernization of governing statute.

**Senator Reagan** asked about the quorum change. Attorney Patenaude stated under current statute there are three regular members and two alternates and because of the vacancy there is always an even number, which presents a potential for a deadlock decision. **Senator Soucy** asked about the board's caseload. Attorney Patenaude stated the board has cleaned up the backlog of cases, and are meeting statutory deadlines for getting decisions out. **Senator Carson** asked about the average workload on a month or yearly basis. Attorney Patenaude said that information could be found in the 2017 Annual Report (pages 12 and 13) which report was distributed to committee members.

- Attorney Patenaude noted the Personnel Appeals Board does not have a home. They do not have an office, no hearing room, and work mostly from home. Most recently, they have been using a hearing room at the Public Utilities Commission (PUC). Their board is very low cost. **Senator Carson** asked how long it took to resolve a case. Attorney Patenaude stated the whole process can run from three months to over a year depends on continuances and delays of witnesses, also depending on the complexity of the issues. They can sit for one-half day to three days. It is just like a court case, but they have a fairly good idea how long a case will take by the size of the file.

**Attorney Chris Nicolopoulos, member of the Personnel Appeals Board (PAB) (in support)**

- On board now for just under three years.
- Last year spent 14 days in hearings or pre-hearing conferences.
- Longest hearing was a 5-day termination hearing for a state trooper, who was terminated.
- Loses one-half of his vacation time per year because he does this on his own; there is a slight compensation increase in this legislation and also an additional member, with a quorum of three.
- There are times when someone shows up for a hearing and one of the board members has to step down due to knowing this person. Most of the board members have full-time jobs and there are conflicts, so by having a fifth member in the panel and a quorum of three really will help the board in many different situations.
- He noted he did not believe this bill was previously before the legislation, but that it was the Compensation Appeals Board last year.

Hearing closed at 9:32 a.m.

Future Action: Ought to Pass

dac  
[SB0533-FN]

Date Hearing Report completed: February 5, 2018-F

# Speakers



# Testimony

#1

# STATE OF NEW HAMPSHIRE



## New Hampshire Personnel Appeals Board

### Fiscal Year 2017 Annual Report

**Prepared Pursuant to  
NH RSA 21-I:46 VI**

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**By Its Members and Alternate Members:**

**Chair Charla Stevens, Esq.  
Vice Chair Norman Patenaude, Esq.  
Commissioner Christopher Nicolopoulos, Esq.  
Commissioner David Goldstein**

**And**

**Administrator of the NH Personnel Appeals Board  
Steven Bunker**

## **Acknowledgments**

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### **Governor**

Christopher T. Sununu

### **Members of the Executive Council**

Joseph D. Kenney, District 1

Andru Volinsky, District 2

Russell E. Prescott, District 3

Christopher C. Pappas, District 4

David K. Wheeler, District 5

### **Commissioner of Administrative Services**

Charles M. Arlinghaus

### **Director of Personnel**

Sara Willingham

### **Division of Personnel Staff**

Steven Bunker

Gail Wilson

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## **RSA 21-I:46 VI**

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"The board shall by September 1 of each year submit an annual report to the governor, commissioner of administrative services, and director of personnel. This report shall include a narrative summary of the work of the board during the previous fiscal year. The report shall also include a description of problems related to the personnel system and the board's recommendations for dealing with those problems."

## **NEW HAMPSHIRE PERSONNEL APPEALS BOARD**

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### **Terms of Appointment**

#### **Members/Alternates Currently Serving**

**CHARLA STEVENS, Esq., Bedford**

**Chair**

June 2, 2014 to June 2, 2017

**NORMAN PATENAUDE, Esq., Portsmouth**

**Vice Chair**

September 24, 2016 to September 24, 2019

**CHRISTOPHER NICOLOPOULOS, Esq., Bow**

June 10, 2015 to September 24, 2016

**DAVID GOLDSTEIN, Dover**

September 3, 2015 to June 2, 2018

**There is currently one (1) seat vacant on the Board.**

**\*NOTE – RSA 21-I:45 provides for the appointment of three (3) regular members and two (2) alternates. Except for a brief period from December 3, 2008 to May 29, 2009 at least one seat on the Board has been vacant since 2004.**

## BOARD COMPOSITION AND DUTIES

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### **RSA 21-I:45 Composition of Board; Compensation; Removal**

There is hereby established a personnel appeals board as follows:

I. The board shall consist of 3 members, not more than 2 of whom shall be from the same political party. There shall also be 2 alternate members of the board, not more than one of whom shall be a member of the same political party. At least 2 members of the board shall have been gainfully employed as a labor relations or personnel professional for a minimum of 5 years. One member shall have been employed within the public personnel field of employment for a minimum of 3 years. Each member and alternate shall be appointed by the governor with the consent of the council for a term of 3 years, and a person appointed to fill a vacancy shall be appointed for the unexpired term. Each member of the board and alternate shall hold office until his successor is appointed and qualified. The governor shall designate one member as chairman of the board. The board shall elect one member to serve as vice chairman. Either the chairman or vice chairman shall be a member of the New Hampshire bar. No member of the board shall be a member of any state or national committee of a political party, nor an officer or member of a committee in any partisan political club or organization, nor shall hold, or be a candidate for, any remunerative elective public office during his term of office and shall not be otherwise employed in any of the agencies of the state government.

II. Members of the board shall each be paid \$100 for each day devoted to the work of the board, but not more than \$5,000 each in any one year. They shall be reimbursed for necessary expenses in connection with their official duties.

III. Members of the board shall be removed only as provided in RSA 4:1.

The Board members understand that their appointment to the Board is not lucrative. It should be noted that the per diem pay for each board member has not increased since June 29, 1988, over twenty-nine (29) years ago. Many of the cases that come before the Board involve complex facts, arguments and legal issues that often require several days of testimony followed by thoughtful and time-consuming deliberation among the Board members. As such, it is imperative to the integrity of the appeals process to be able to recruit and retain qualified attorneys/persons to serve on the Board.

The Board is a quasi-judicial body that requires either the Chair or Vice Chair to be a member of the New Hampshire Bar. RSA 21-1:45 also requires that two (2) Board members shall have been gainfully employed as a labor relations or personnel professional for a minimum of 5 years and one member shall have been employed within the public personnel field of employment for a minimum of three (3) years. Needless to say, it is expected that each Board member have the knowledge, experience and expertise to render thoughtful and just decisions.

At present, three (3) of the four (4) members of the Board are members of the New Hampshire Bar. According to the New Hampshire Bar News (January 21, 2015) the median billing rate reported for New Hampshire Attorneys in 2014 was \$225 an hour, up 28% from 2005.

The current per diem pay for Board members (\$100.00 for each day but not more than \$5,000 each in any one year) calls to question whether or not the Board can be successful in recruiting qualified and competent Board members, especially attorneys, who can earn more than twice as much money in one (1) hour of work than a Board member earns in an entire day of work for the Board. It seems reasonable to question if this is at least part of the reason one (1) seat on the Board has been vacant since 2004,

except for a brief period of time from December 3, 2008 through May 29, 2009.

As of June 30, 2017, there are four (4) Board members. Not having a fifth member of the Board puts an incredible amount of strain and pressure on the four (4) members to do their very best to make sure that appeals are heard in a timely manner so that justice is not delayed. It is a concern that the Board members' schedules will not always allow a hearing to be heard in a timely manner.

Under the circumstances and considering the expectations of RSA 21-I:45, it would be reasonable and appropriate for the Board members to be paid a stipend of \$200 in each biweekly state payroll cycle for work performed outside of scheduled sessions in order to be prepared for said scheduled sessions, which would include, but not be limited to, review of appeal records, motions, court decisions and other related materials. In addition, it would be reasonable and appropriate to increase the daily per diem rate to at least \$400 per day. The Board intends to file appropriate legislation to effectuate this change.

### **RSA 21-I:46 Powers and Duties of Board**

The board shall meet as often as necessary to conduct its business, provided that no more than 30 days shall elapse between meetings whenever there is any appeal pending before the board. Two (2) members of the board shall constitute a quorum.

## **BOARD DEVELOPMENTS FOR FY 2017**

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Charla Stevens, Esq., continues to serve as Chair of the Board in holdover status as her term expired on June 2, 2017 and she will not seek reappointment. The Board wishes to acknowledge and thank Attorney Stevens for her leadership, knowledge, expertise, and her commitment to the Board and the State of New Hampshire. The fifth seat on the Board has been vacant since 2004, with the exception of a brief period of time from December 3, 2008 through May 29, 2009.

## CASE LOAD AND SCHEDULING

The Board continues to schedule Pre-Hearings and Hearings on the Merits as timely as possible, taking into account the schedules of the four (4) current Board members and the parties involved. Cases filed for FY 2017 and trends follow below.

### STATISTICAL INFORMATION Appeals Received During FY 2017

(Arranged by Department)

DOCKET #	DESCRIPTION	STATE AGENCY
2017-D-001	LETTER OF WARNING	DEPT OF HEALTH & HUMAN SERVICES
2017-D-002	LETTER OF WARNING	DEPT OF HEALTH & HUMAN SERVICES
2017-D-003	LETTER OF WARNING	DEPT OF HEALTH & HUMAN SERVICES
2017-D-004	LETTER OF WARNING	DEPT OF HEALTH & HUMAN SERVICES
2017-D-005	LETTER OF WARNING	DEPT OF HEALTH & HUMAN SERVICES
2017-D-008	LETTER OF WARNING	DEPT OF HEALTH & HUMAN SERVICES
2017-D-009	LETTER OF WARNING	DEPT OF HEALTH & HUMAN SERVICES
2017-D-014	LETTER OF WARNING	DEPT OF HEALTH & HUMAN SERVICES
2017-D-007	SUSPENSION W/O PAY	DEPT OF HEALTH & HUMAN SERVICES
2017-D-006	SUSPENSION W/PAY	DEPT OF HEALTH & HUMAN SERVICES
2017-D-010	SUSPENSION W/PAY	DEPT OF HEALTH & HUMAN SERVICES
2017-T-003	TERMINATION	DEPT OF HEALTH & HUMAN SERVICES
2017-T-004	TERMINATION	DEPT OF HEALTH & HUMAN SERVICES
2017-T-009	TERMINATION	DEPT OF HEALTH & HUMAN SERVICES
2017-T-010	TERMINATION	DEPT OF HEALTH & HUMAN SERVICES
2017-T-011	TERMINATION	DEPT OF HEALTH & HUMAN SERVICES
2017-T-014	TERMINATION	DEPT OF HEALTH & HUMAN SERVICES
2017-T-015	TERMINATION	DEPT OF HEALTH & HUMAN SERVICES
2017-T-017	TERMINATION	DEPT OF HEALTH & HUMAN SERVICES
<b>19 DEPT OF HEALTH &amp; HUMAN SERVICES APPEALS</b>		
2017-T-007	TERMINATION	DEPT OF RESOURCES & ECONOMIC DEVELOPMENT
<b>1 DEPT OF RESOURCES &amp; ECONOMIC DEVELOPMENT APPEAL</b>		
2017-T-005	TERMINATION	INSURANCE DEPT
<b>1 INSURANCE DEPT APPEAL</b>		
2017-T-001	TERMINATION	DEPT OF INFORMATION TECHNOLOGY
<b>1 DEPT OF INFORMATION TECHNOLOGY APPEAL</b>		
2017-T-008	TERMINATION	LIQUOR COMMISSION
2017-T-016	TERMINATION	LIQUOR COMMISSION
<b>2 LIQUOR COMMISSION APPEALS</b>		
2017-D-015	LETTER OF WARNING	VETERANS HOME
<b>1 VETERANS HOME APPEAL</b>		
2017-D-013	LETTER OF WARNING	OFFICE OF CONSUMER AFFAIRS
<b>1 OFFICE OF CONSUMER AFFAIRS APPEAL</b>		
2017-T-012	TERMINATION	DEPT OF FIRE SAFETY
2017-T-013	TERMINATION	DEPT OF FIRE SAFETY
<b>2 DEPT OF FIRE SAFETY APPEALS</b>		
2017-D-012	LETTER OF WARNING	DEPT OF SAFETY
2017-P-001	PROMOTION NON-SELECTION	DEPT OF SAFETY
2017-C-001	CLASSIFICATION	DEPT OF SAFETY
2017-D-011	SUSPENSION W/O PAY	DEPT OF SAFETY
2017-T-002	TERMINATION	DEPT OF SAFETY
<b>5 DEPT OF SAFETY APPEALS</b>		
2017-T-006	TERMINATION	DEPT OF TRANSPORTATION
<b>1 DEPT OF TRANSPORTATION APPEAL</b>		



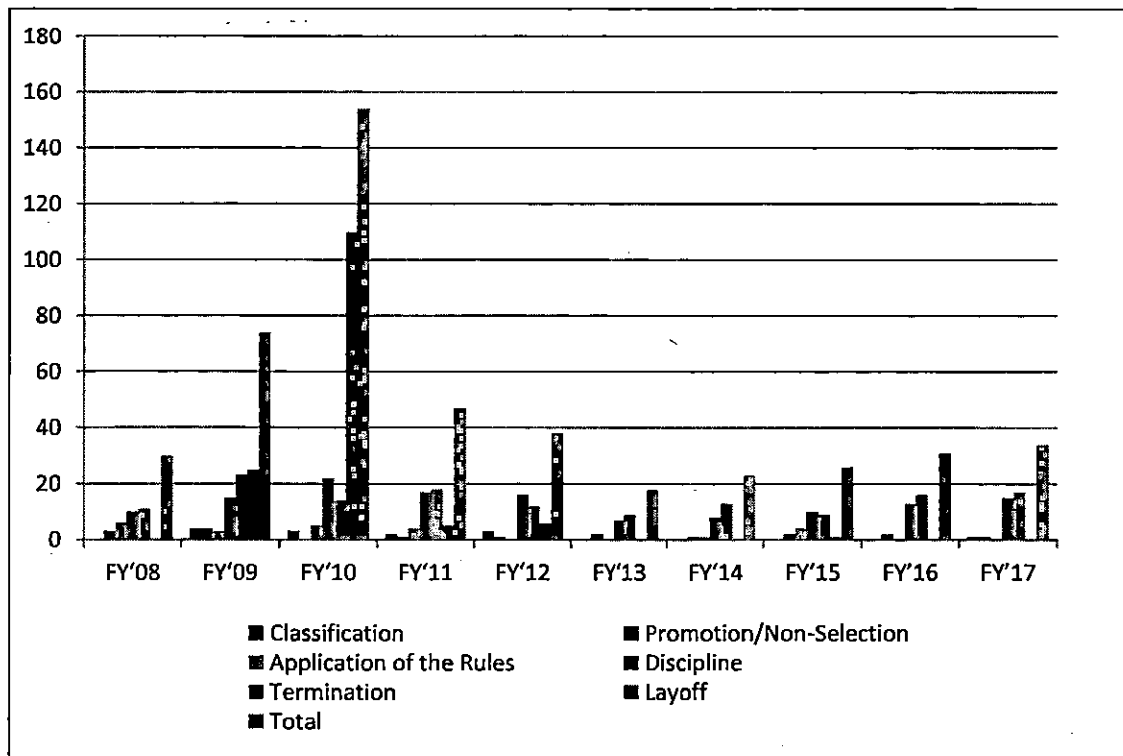
### Appeals Received During FY 2017

(Arranged by Appeal Type)

DOCKET #	DESCRIPTION	NUMBER PER AGENCY	STATE AGENCY
2017-D-001	LETTER OF WARNING	8	DEPT OF HEALTH & HUMAN SERVICES
2017-D-002	LETTER OF WARNING		DEPT OF HEALTH & HUMAN SERVICES
2017-D-003	LETTER OF WARNING		DEPT OF HEALTH & HUMAN SERVICES
2017-D-004	LETTER OF WARNING		DEPT OF HEALTH & HUMAN SERVICES
2017-D-005	LETTER OF WARNING		DEPT OF HEALTH & HUMAN SERVICES
2017-D-008	LETTER OF WARNING		DEPT OF HEALTH & HUMAN SERVICES
2017-D-009	LETTER OF WARNING		DEPT OF HEALTH & HUMAN SERVICES
2017-D-014	LETTER OF WARNING		DEPT OF HEALTH & HUMAN SERVICES
2017-D-015	LETTER OF WARNING	1	VETERANS HOME
2017-D-013	LETTER OF WARNING	1	OFFICE OF CONSUMER AFFAIRS
2017-D-012	LETTER OF WARNING	1	DEPT OF SAFETY
<b>11 APPEALS OF LETTERS OF WARNING FOR FY 2017</b>			
2017-P-001	PROMO NON-SELECTION	1	DEPT OF SAFETY
<b>1 APPEAL FOR NON-SELECTION FOR VACANCY OR PROMOTION FOR FY 2017</b>			
2017-C-001	RECLASSIFICATION	1	DEPT OF SAFETY
<b>1 APPEAL OF CLASSIFICATION FOR FY 2017</b>			
2017-D-007	SUSPENSION W/O PAY	1	DEPT OF HEALTH & HUMAN SERVICES
2017-D-011	SUSPENSION W/O PAY	1	DEPT OF SAFETY
<b>2 APPEALS OF SUSPENSION WITHOUT PAY FOR FY 2017</b>			
2017-D-006	SUSPENSION W/PAY	2	DEPT OF HEALTH & HUMAN SERVICES
2017-D-010	SUSPENSION W/PAY		DEPT OF HEALTH & HUMAN SERVICES
<b>2 APPEALS OF SUSPENSION WITH PAY FOR FY 2017</b>			
2017-T-003	TERMINATION	8	DEPT OF HEALTH & HUMAN SERVICES
2017-T-004	TERMINATION		DEPT OF HEALTH & HUMAN SERVICES
2017-T-009	TERMINATION		DEPT OF HEALTH & HUMAN SERVICES
2017-T-010	TERMINATION		DEPT OF HEALTH & HUMAN SERVICES
2017-T-011	TERMINATION		DEPT OF HEALTH & HUMAN SERVICES
2017-T-014	TERMINATION		DEPT OF HEALTH & HUMAN SERVICES
2017-T-015	TERMINATION		DEPT OF HEALTH & HUMAN SERVICES
2017-T-017	TERMINATION		DEPT OF HEALTH & HUMAN SERVICES
2017-T-007	TERMINATION	1	DRED
2017-T-013	TERMINATION	2	DEPT OF FIRE SAFETY
2017-T-012	TERMINATION		DEPT OF FIRE SAFETY
2017-T-005	TERMINATION	1	INSURANCE DEPT
2017-T-001	TERMINATION	1	DEPT OF INFORMATION TECHNOLOGY
2017-T-008	TERMINATION	2	LIQUOR COMMISSION
2017-T-016	TERMINATION		LIQUOR COMMISSION
2017-T-002	TERMINATION	1	DEPT OF SAFETY
2017-T-006	TERMINATION	1	DEPT OF TRANSPORTATION
<b>17 APPEALS OF TERMINATIONS FOR FY 2017</b>			
<b>TOTAL OF 34 APPEALS RECEIVED IN FY 2017</b>			

### Ten-Year History of Appeals Filed

	FY'08	FY'09	FY'10	FY'11	FY'12	FY'13	FY'14	FY'15	FY'16	FY'17
Classification	0	4	3	2	3	0	0	0	0	1
Promotion/Non-Selection	3	4	0	1	1	2	1	2	2	1
Application of the Rules	6	3	5	4	0	0	1	4	0	0
Discipline	10	15	22	17	16	7	8	10	13	15
Termination	11	23	14	18	12	9	13	9	16	17
Layoff	0	25	110	5	6	0	0	1	0	0
<b>Total</b>	<b>30</b>	<b>74</b>	<b>154</b>	<b>47</b>	<b>38</b>	<b>18</b>	<b>23</b>	<b>26</b>	<b>31</b>	<b>34</b>



**Representation of Parties at Appeals Board Proceedings**

<b>REPRESENTATIVES</b>	<b>FY '12</b>	<b>FY '13</b>	<b>FY '14</b>	<b>FY '15</b>	<b>FY '16</b>	<b>FY '17</b>
Pro Se	8	4	4	3	5	9
Private Attorney	4	4	3	6	9	3
State Employees Association, Troopers Association, NEPBA or Teamsters	26	10	16	17	17	22

## Narrative

During the course of Fiscal Year 2017, the Board received 34 new appeals. This was a 10% increase over the number received in Fiscal Year 2016. The Board noticed Prehearing Conferences for 66 appeals, 6 of which were withdrawn or postponed prior to the scheduled prehearing conference dates; this is an increase of 33% from Prehearing Conferences scheduled in FY 2016. The Board held the Prehearing Conferences for the 60 appeals on six (6) separate days during FY 2017. (It is noted that two or three prehearing conferences were held on some appeals.) The Board held Hearings on the Merits for 25 appeals during Fiscal Year 2017; this is more than triple the number of hearings held in FY 2016. Although 36 Hearings on the Merits were scheduled and noticed for Fiscal Year 2017, 11 hearings were postponed, withdrawn, settled, or dismissed. Of the 25 appeals heard, one was a 3-day hearing and one was a 2-day hearing. The remaining 23 appeals were either half-day or full-day hearings. Therefore, the Board presided at an average of more than 2 hearings per month in FY 2017. Additionally, the Board met on 5 occasions to remain in compliance with RSA 21-I:46.

The Personnel Appeals Board made decisions on 25 appeals in FY 2017. Of those 25 appeals, the Board denied 19 and granted 6. Three of the granted appeals were on terminations, 2 were on letters of warning, and one was a classification appeal. Also in FY 2017, 10 appeals were withdrawn, 3 were settled, and 5 were dismissed; therefore, a total of 43 appeals were resolved in FY 2017. The Board also received 9 Motions for Reconsideration/Rehearing of appeal decisions; all were denied, and they received and acted upon 14 other Motions.

The time between filing an appeal and the final resolution is not always determined by the availability and the scheduling of the Board. The scheduling is often affected by one or both of the parties, who are either represented or pro se. A prehearing or final hearing may be continued for reasons including, but not limited to, at the request of either party for such reasons as unavailability of either party or their representatives, unavailability of a witness, discovery issues, and attempts to settle the case before the final hearing. As a result of the continuance, it is sometimes necessary and requested by the parties to schedule a further prehearing conference, which further pushes out the date for the final

hearing on the merits. The Board, however, continues to strive to ensure that the appeals are heard in a timely manner and it gives scheduling priority to those cases that involve an immediate loss of compensation, such as a termination or otherwise.

## **PUBLIC ACCESS TO RECORDS AND PROCEEDINGS**

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Documents submitted to the Board including hearing requests, pleadings and attachments, are exempt from disclosure under the provisions of RSA 91-A:5, IV, unless and until those documents are presented to the Board and admitted into the record at a public hearing, as those records include personnel records and records pertaining to internal personnel practices. Once those documents are introduced in a public hearing, however, they are included in the public record required by RSA 21-I:42, IX (a)(3) and RSA 541-A, and they are open to public inspection unless otherwise exempt from disclosure by Court order, by order of the Board, or as described by RSA 91-A:5, IV.

In order to remind parties that their submissions and the Board's decisions are readily available to the public, the Board's web page provides the following caution:

"Hearings are open to the public. In most cases, documents that a person files as an attachment to an original appeal, or as evidence in an appeal, become public records. As such, agencies and employees filing appeals need to be careful about releasing any documents that they would not want published and available to the general public."

Employees can opt to go through an informal settlement process prior to having a full hearing before the Board. This process is not open to the public and is encouraged as a way for parties to resolve their disputes before going before the Board for disposition.

### **Electronic Archives**

Before 2008, the Board kept hard-copy files that included all submissions, notices, pleadings, exhibits and decisions for each appeal filed, as well as copies of tape recordings for each hearing conducted. When its amended rules were adopted in 2008, the Board included provisions concerning retention of records, whereby parties could retrieve their copies of exhibits once a final deadline for further appeal had passed. Those exhibits not returned to the parties could then be eliminated, reducing the Board's

file of the appeal to copies of pleadings and decisions. In 2009, the Board began purging its hard-copy files, replacing the original appeals, pleadings and decisions with an electronic copy maintained on CD. The vast majority of the Board's old archived pleadings and decisions have since been scanned, and the paper records shredded and recycled. Since electronic computer files are backed up daily, in 2016, CD maintenance of files was replaced with file maintenance on the State's computer hard drive. Each file is scanned and the hard copy of the file is maintained for a period of four years from the last date of activity on the file. At the end of four years, the hard copy is shredded and recycled; the computer copy of the file may be maintained indefinitely.

## APPEALS DECIDED, DISMISSED, SETTLED OR WITHDRAWN DURING FY 2016

	DOCKET #	AGENCY	ACTION APPEALED	DECISION
1	2014-D-009	DEPT OF CORRECTIONS	LETTER OF WARNING	DENIED
2	2016-D-012	DEPT OF CORRECTIONS	LETTER OF WARNING	WITHDRAWN
3	2016-P-002	DEPT OF CORRECTIONS	PROMOTION NON-SELECTION	WITHDRAWN
4	2017-T-013	DEPT OF FIRE SAFETY	TERMINATION	SETTLED
5	2016-D-002	DEPT OF HEALTH & HUMAN SERVICES	LETTER OF WARNING	DENIED
6	2016-D-003	DEPT OF HEALTH & HUMAN SERVICES	LETTER OF WARNING	DENIED
7	2016-D-004	DEPT OF HEALTH & HUMAN SERVICES	LETTER OF WARNING	DENIED
8	2016-D-007	DEPT OF HEALTH & HUMAN SERVICES	LETTER OF WARNING	DENIED
9	2016-D-009	DEPT OF HEALTH & HUMAN SERVICES	LETTER OF WARNING	GRANTED
10	2016-D-011	DEPT OF HEALTH & HUMAN SERVICES	LETTER OF WARNING	DENIED
11	2017-D-001	DEPT OF HEALTH & HUMAN SERVICES	LETTER OF WARNING	DENIED
12	2017-D-002	DEPT OF HEALTH & HUMAN SERVICES	LETTER OF WARNING	DENIED
13	2017-D-003	DEPT OF HEALTH & HUMAN SERVICES	LETTER OF WARNING	DENIED
14	2017-D-004	DEPT OF HEALTH & HUMAN SERVICES	LETTER OF WARNING	DENIED
15	2017-D-005	DEPT OF HEALTH & HUMAN SERVICES	LETTER OF WARNING	DENIED
16	2017-D-007	DEPT OF HEALTH & HUMAN SERVICES	SUSPENSION W/O PAY	SETTLED
17	2010-L-075	DEPT OF HEALTH & HUMAN SERVICES	TERMINATION	DENIED
18	2016-T-005	DEPT OF HEALTH & HUMAN SERVICES	TERMINATION	GRANTED
19	2016-T-009	DEPT OF HEALTH & HUMAN SERVICES	TERMINATION	WITHDRAWN
20	2016-T-010	DEPT OF HEALTH & HUMAN SERVICES	TERMINATION	DISMISSED
21	2016-T-012	DEPT OF HEALTH & HUMAN SERVICES	TERMINATION	DENIED
22	2016-T-013	DEPT OF HEALTH & HUMAN SERVICES	TERMINATION	DISMISSED
23	2016-T-014	DEPT OF HEALTH & HUMAN SERVICES	TERMINATION	DENIED
24	2017-T-003	DEPT OF HEALTH & HUMAN SERVICES	TERMINATION	DENIED
25	2017-T-009	DEPT OF HEALTH & HUMAN SERVICES	TERMINATION	WITHDRAWN
26	2016-D-013	DEPT OF INFORMATION TECHNOLOGY	LETTER OF WARNING	DENIED
27	2016-T-016	DEPT OF INFORMATION TECHNOLOGY	TERMINATION	DISMISSED
28	2017-T-001	DEPT OF INFORMATION TECHNOLOGY	TERMINATION	DENIED
29	2017-T-007	DEPT OF RESOURCES & ECONOMIC DEVELOPMENT	TERMINATION	SETTLED
30	2017-C-001	DEPT OF SAFETY	CLASSIFICATION	GRANTED
31	2016-D-008	DEPT OF SAFETY	LETTER OF WARNING	WITHDRAWN
32	2017-D-012	DEPT OF SAFETY	LETTER OF WARNING	WITHDRAWN
33	2017-P-001	DEPT OF SAFETY	PROMOTION NON-SELECTION	WITHDRAWN
34	2016-T-001	DEPT OF SAFETY	TERMINATION	DENIED
35	2016-T-002	DEPT OF SAFETY	TERMINATION	GRANTED
36	2017-T-006	DEPT OF TRANSPORTATION	TERMINATION	WITHDRAWN
37	2017-T-005	INSURANCE DEPT	TERMINATION	DISMISSE
38	2016-T-003	LIQUOR COMMISSION	TERMINATION	GRANTED
39	2016-T-015	LIQUOR COMMISSION	TERMINATION	WITHDRAWN
40	2017-T-008	LIQUOR COMMISSION	TERMINATION	WITHDRAWN
41	2017-D-013	OFFICE OF CONSUMER AFFAIRS	LETTER OF WARNING	GRANTED
42	2015-D-002	OFFICE OF LICENSED ALLIED HEALTH PROFFSNLS	SUSPENSION W/O PAY	DISMISSED
43	2016-D-010	OFFICE OF THE GOVERNOR	SUSPENSION W/O PAY	DENIED



## **DECISIONS OF THE NEW HAMPSHIRE SUPREME COURT**

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The New Hampshire Supreme Court considered and subsequently denied the appeal of Thomas Sloan, affirming the Personnel Appeals Board's decision to uphold his termination. James Cole appealed his termination to the New Hampshire Supreme Court in FY 2017 and his appeal was accepted. A decision has not been issued nor has it been scheduled by the Court for oral argument.

## **OBSERVATIONS AND RECOMMENDATIONS FOR IMPROVEMENT OF THE PERSONNEL SYSTEM**

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RSA 21-I:46, VI, requires the Personnel Appeals Board to include a section in its annual report describing the Board's observations about problems related to the personnel system and its recommendations for dealing with those problems.

The Board understands the value of effective supervisors and managers and the role they play within state government. As an employer, the State of New Hampshire must ensure that supervisors and managers continue to receive the necessary training and resources to remain effective leaders. In addition to mentoring and learning from one's own supervisor/manager, the state offers educational opportunities for supervisors and managers to enhance the skills needed for successful supervision and management of their employees.

The Division of Personnel's Bureau of Education and Training offers a two-day "Foundations of Supervision" class for current supervisors and managers, employees who have been promoted into a supervisory/managerial position or a new employee who is hired into a supervisory/managerial position. It is vital that supervisors and managers hone and/or develop the skills to not only manage the workload that they and their supervisees are responsible for but also to enrich their knowledge of how to effectively manage and supervise their staff so they are able to work as a cohesive unit. The Board strongly encourages all state supervisors and managers to take advantage of this educational opportunity.

In addition to the "Foundations of Supervision" class the Bureau of Education and Training also offers a nationally accredited training known as the Certified Public Supervisors Program (CPS). The CPS Program offers a wide variety of classes with topics that come before the Board frequently. The Board believes that it would be beneficial for supervisors

to enroll in this program so they may refresh their supervisory skills as well as develop new skills that will help them become even more effective supervisors.

# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Wednesday, January 31, 2018

THE COMMITTEE ON Executive Departments and Administration  
to which was referred **SB 533-FN**

**AN ACT** relative to the composition and compensation of the  
personnel appeals board.

Having considered the same, the committee recommends that the Bill

**OUGHT TO PASS**

**BY A VOTE OF: 4-0**

Senator Sharon Carson  
For the Committee

Deb Chroniak 271-1403

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Tuesday, March 6, 2018

THE COMMITTEE ON Finance

to which was referred **SB 533-FN**

AN ACT

relative to the composition and compensation of the  
personnel appeals board.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 6-0

AMENDMENT # 0979s

Senator Dan Feltes  
For the Committee

Deb Martone 271-4980