

SB 414 - AN ACT clarifying the laws relative to municipal impact fees, off-site exactions, vesting of development rights, and waiver of subdivision regulations

The biggest planning news of this legislative session is the enactment of [SB 414](#), which reorganizes and amends [RSA 674:39](#) (four-year exemption and vesting of development rights), changes how impact fees are administered, reverses the impact of the Supreme Court's decision in [Simonsen v. Derry](#), and explicitly authorizes waiver of subdivision regulations. This bill is the product of the [SB 157 study committee](#) in 2003, which worked under the chairmanship of Senator Green to address confusion stemming from several court cases over the last few years, including [Simonsen v. Derry](#) (2000), [AWL Power v. Rochester](#) (2002), and [R.J. Moreau Companies v. Litchfield](#) (2002). The bill was signed by Governor Benson on June 7 and is filed as Chapter 199.

1. **Vesting.** RSA 674:39 has long been a source of confusion, largely because of its convoluted structure. SB 414 clearly breaks down the statute into its operative sections. Additionally, in light of the impact of the AWL Power case, it spells out to planning boards the importance of defining what is meant by the statute's terms "active and substantial development or building" and "substantial completion."
 - o If a developer performs "active and substantial development or building" within the first year after approval, then the development is protected against most local regulatory changes (including changes to impact fees) for an additional three years (hence, the "four-year exemption").
 - o If a developer performs "substantial completion of the improvements" shown on the plat at any time, then the development vests against any future changes to local regulations, with the exception of impact fees, which may be changed at any time (outside of the four-year exemption).
 - o If a planning board fails to identify what is meant by "active and substantial development or building," then the approved development automatically gets the four-year exemption.
 - o The planning board is not required to define these terms, but the benefit of doing so is to help avoid the problem faced by the City of Rochester in the AWL Power case.
 - o Site plans must be recorded in the registry of deeds to gain the vesting benefits of this statute.
 - o This section of the bill is **effective June 7, 2004**.
2. **Impact Fees.** SB 414 shifts some of the requirements for impact fees found in [RSA 674:21, V](#). First, impact fees will be required to be assessed at the time of planning board approval, and collected at the time of issuance of certificate of occupancy. This will be the default standard for assessment and collection, although the planning board and the developer are free to establish a different, mutually acceptable arrangement if they desire.
 - o This section of the bill will become **effective on June 1, 2005**, allowing municipalities a year to change their impact fee ordinances, if necessary.
3. **Off-Site Exactions.** In its 2000 decision in [Simonsen v. Derry](#), the NH Supreme Court held that a planning board had no power to levy exactions against a development for off-site improvements, unless the municipality had an impact fee ordinance in place. This surprising decision contravened 25 years of case law, and sent planners in a frantic search for alternatives. SB 414 provides a solution for much of the impact of Simonsen. It adds new subparagraph [RSA 674:21, V\(j\)](#), allowing planning boards to require developers to pay for off-site impacts related to highways, drainage, water, and sewer, even without an impact fee ordinance. All other impacts will still require a properly adopted impact fee ordinance.
 - o This section of the bill is **effective June 7, 2004**.
4. **Subdivision Regulation Waiver.** Although the authority of planning boards to waive subdivision regulations has been recognized for years by the NH Supreme Court, this power was never formally recognized in statute, as has been the situation with site plan regulations. By providing this statutory authority, SB 414 codifies the Court's 1991 decision in [Frisella v. Farmington](#).
 - o This section of the bill is **effective June 7, 2004**