

B. Chapter 106 (Senate Bill 291) - Amendment to RSA 674:21

In the spring of 2012, the New Hampshire Legislature passed amendments to RSA 674:21 regarding the administration of impact fees. The new provision, which became effective July 28, 2012, provides as follows (with old language indicated by a strikethrough and new language in bold):

As used in this section "impact fee" means a fee or assessment imposed upon development, including subdivision, building construction, or other land use change, in order to help meet the needs occasioned by that development for the construction or improvement of capital facilities owned or operated by the municipality, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; ~~public~~ **municipal** road systems and rights-of-way; municipal office facilities; public school facilities; the municipality's proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste collection, transfer, recycling, processing, and disposal facilities; public library facilities; and public recreational facilities not including public open space.

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(k) Revenue from impact fees imposed upon development and collected by a municipality under RSA 674:21, V for construction of or improvement to municipal road systems may be expended upon state highways within the municipality only for improvement costs that are related to the capital needs created by the development. Such improvements may include items such as, but not limited to, traffic signals and signage, turning lanes, additional travel lanes, and guard rails. No such improvements shall be constructed or installed without approval of the state department of transportation. In no event shall impact fees be used for any improvements to roads, bridges, or interchanges that are part of the interstate highway system. Nothing in RSA 674:21, V shall be construed as allowing or authorizing additional impact fees merely by virtue of having approved the expenditure of collected fee revenue for construction of or improvement of state highways, nor shall it be construed as allowing the adoption of new impact fees devoted to assessing impacts to state highways.

(l) No later than 60 days following the end of the fiscal year, any municipality having adopted an impact fee ordinance shall prepare a report listing all expenditures of impact fee revenue for the prior fiscal year, identifying the capital improvement project for which the fees were assessed and stating the dates upon which the fees were assessed and collected. The annual report shall enable the public to track the payment, expenditure, and status of the individually collected fees to determine whether said fees were expended, retained, or refunded.

This new language created two new provisions: (1) a reporting requirement; and (2) a provision providing amnesty for the prior collection of impact fees for improvements to state highways.

1. Reporting Requirement

The new reporting provision applies to all municipalities that have adopted an impact fee ordinance. RSA 674:21, V(l). Under this new provision, municipalities must report all impact fee expenditures on an annual basis. The report must be prepared shortly after (60 days) the end of the fiscal year and must contain:

- a list of all expenditures of impact fee revenue for the prior fiscal year,

- the capital improvement project for which the fees were assessed,
- the dates upon which the fees were assessed, and
- the dates upon which the fees were collected.

2. State Highway Provision

The new state highway provision of the statute allows municipalities to use revenue from *already collected* impact fees on improvements to state highways within the municipality. RSA 674:21, V(k). The language makes it clear however, that municipalities are not now, nor were they ever, allowed to assess impact fees for improvements to state highways. As such, this new language in a way grants amnesty to municipalities which have previously collected fees for state highway improvements. The legislature expressly cautioned, however, that this practice cannot continue going forward.

According to the testimony on the House Floor from Public Works and Highways, the committee that reviewed and recommended the bill, the purpose of the amendment is to "allow revenues collected from existing municipal impact fees for municipal roadways to be used on state-owned roads, provided that such improvements are related to impacts caused by the development." *Rep. David B Campbell for Public Works and Highways, House Journal, Friday, April 20, 2012.* The Public Works and Highways committee was clear, however, that "the bill neither alters the current statutory prohibition on municipalities assessing impact fees for state roads, nor allows a town or city to use state roads when calculating impact fees." *Rep. David B Campbell for Public Works and Highways, House Journal, Friday, April 20, 2012.*

Under the new language, municipalities must seek approval of the N.H. Department of Transportation before any improvements to a state highway are made. These improvements can include (but are not limited to) the following:

- traffic signals and signage
- turning lanes
- additional travel lanes
- guard rails

This amendment clears up any confusion with regard to impact fees and state highways. The legislature has given municipalities express authority to use collected impact fees for state highway improvements, even though impact fees cannot be assessed for such improvements going forward. This amendment does not affect the common practice in many municipalities to require the developer to make certain improvements to state highways without collecting an impact fee. This is done under the municipality's power to require off-site improvements.

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