



The State of New Hampshire  
**Department of Environmental Services**

**Thomas S. Burack, Commissioner**



*Celebrating 25 Years of Protecting  
New Hampshire's Environment*

February 14, 2012

The Honorable Bob Odell, Chairman  
Senate Ways & Means  
State House, Room 100  
Concord, New Hampshire 03301

RE: SB 304, relative to the waiver of state fees associated with historic preservation

Dear Senator Odell:

Thank you for this opportunity to provide comments on SB 304, which would require that all state agencies waive fees associated with the restoration or preservation of certain historic structures in New Hampshire. The Department of Environmental Services (DES) does not support this bill, for the reasons expressed below, but would support Interim Study status for the bill in order to provide an opportunity for the various agencies that might be affected to study the issues and to determine how they might best address the concerns that prompted the filing of this bill.

It is DES's understanding that the bill's primary sponsor, Senator Sanborn, has prepared an amendment (2012-0096s) that would clarify the intent by amending RSA 227-C by inserting a new section (227-C:26-a) stating:

*Notwithstanding any other provision of law, if a property or structure listed or eligible for listing on the National or New Hampshire State Register of Historic Places, as designated by the state historic preservation office, is restored or preserved with private funds, any state fees associated with the restoration or preservation shall be waived. Nothing in this section shall exempt the property or structure from applicable state and local property taxes or local zoning and land use regulations.*

This language would effectively require DES (and every other state agency having jurisdiction) to waive all permit fees or other charges associated with the agency's review, permitting and approval of any restoration or preservation project on any site listed or eligible for listing on the state or federal registers of historic places. The number of properties that could potentially qualify for such consideration could be in the many thousands, and given that DES alone administers 95 different categories of approvals (many of which have fees associated with them), the potential number of projects that could qualify under this legislation may be substantial. This is a concern to DES because practically all of our permit programs are supported by fees that are deposited to dedicated funds specifically to support those particular programs. Those fees have been established in amounts necessary to ensure that DES has adequate resources to provide

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timely review and processing of all applications. If fees are reduced or waived for one category of applicant, the net effect is that all other applicants effectively are required to subsidize the permit review costs for the applicant that receives the fee reduction. Depending on the time required to process these “subsidized” applications, the effect could also be to materially increase the review time for all other applicants, which would have further negative economic impacts on those applicants.

While DES appreciates and supports efforts to restore and preserve historic properties or structures, we respectfully urge that legislative efforts to provide an incentive for such work be based on careful and thorough consideration of the fiscal and programmatic impacts of fee waivers or reductions. DES believes that Interim Study would provide an opportunity for such an evaluation.

Moreover, an understanding of the particular situation that served as the impetus for this legislation may assist the Committee in its evaluation of this bill. A private citizen purchased a bridge (known as the Pingree Bridge) from the Town of Salisbury, New Hampshire on the condition that the citizen would remove the bridge and place it on private property. The party determined to use the bridge, which is eligible for listing on the National Register of Historic Places, as a new crossing on private property of the Warner River in Warner. Because the span (or length) of the bridge is shorter than the proposed crossing location, it was necessary to both build bridge abutments and to dredge the river channel in order to support the structure and ensure that there was a large enough orifice under the bridge to allow 100 year storms to pass. Under both state and federal laws, such work requires a wetlands permit, and the applicant paid a permit application fee of \$331.60 for that permit. In addition, when work is performed within jurisdictional wetlands (which includes river banks and river beds), the applicant must “mitigate” for those impacts by either conducting a mitigation project (such as restoring a damaged wetland or placing upland property under a permanent conservation easement) or making a payment into the Aquatic Resource Mitigation (ARM) Fund established pursuant to RSA 482-A:28 through 33. In this instance, the applicant chose to make a payment to the ARM Fund in the amount established by the payment formula set out in the law, which in this instance was \$9,383.28. Because mitigation for wetlands impacts is a requirement of both state and federal law, even if SB 304 were enacted, DES could not waive the mitigation requirement and, thus, this cost could not be reduced for the project proponent. And as pointed out above, waiving a permit fee (in this particular instance, \$331.60) may provide a small benefit or incentive for undertaking such a project, but would also mean that other parties must subsidize the fee for the historic preservation project.

It should also be recognized that there are many industrial and commercial buildings and structures in New Hampshire, most of which are over 50 years old and, therefore, potentially eligible for listing on the state or national register of historic places. It is possible that such sites could be contaminated with wastes from old operations. DES is required under various laws to recover all of its costs associated with its oversight of the investigation and cleanup of such sites. In some cases these projects are very time consuming and could last for many years. The state’s “fees” in the aggregate for such

projects could amount to hundreds of thousands of dollars. To grant a waiver of such fees, as proposed in SB 304, would put other parties that are undertaking site cleanups on non-historic properties in the position of subsidizing work on historic sites and could also reduce the availability and timeliness of DES staff work on non-historic sites.

Finally, it should be noted that municipalities and other governmental entities may view the approach proposed by SB 304 as discriminating against projects that are undertaken by a municipality using taxpayer funds rather than private funds. It is also unclear as to whether such a distinction would raise equal protection clause issues under both the New Hampshire and United States Constitutions.

For all of these reasons, DES opposes this legislation and urges that the Committee find SB 304 appropriate for Interim Study. Should you have further questions, please contact Rene Pelletier, Assistant Director of the Water Division, at 271-2951, or me at 271-2958.

Respectfully submitted,



Thomas S. Burack  
Commissioner

cc: Senator Andy Sanborn  
Senator John S. Barnes, Jr.  
Senator David Boutin  
Senator Sharon M. Carson  
Senator John T. Gallus  
Senator Gary Ervery Lambert  
Senator James H. Luther  
Senator Nancy F. Stiles  
Representative David J. Bettencourt

