

SB 78 - AS AMENDED BY THE SENATE

03/16/2023 0810s

2023 SESSION

23-0977

10/05

SENATE BILL **78**

AN ACT relative to subdivision regulations on the completion of improvements.

SPONSORS: Sen. Innis, Dist 7

COMMITTEE: Election Law and Municipal Affairs

ANALYSIS

This bill establishes requirements and limits on the security required for street work and utility installations, landscaping, final pavement, and fire suppression systems under subdivision regulations regarding completion of improvements prior to final approval.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to subdivision regulations on the completion of improvements.

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

1 1 Subdivision Regulations; Completion of Work. Amend RSA 674:36, III and IV to read as
2 follows:

3 III. The subdivision regulations of the planning board may stipulate, as a condition
4 precedent to the approval of the plat, the extent to which and the manner in which streets shall be
5 graded and improved and to which water, sewer, and other utility mains, piping, connections, or
6 other facilities shall be installed. The regulations or practice of the planning board:

7 (a) May provide for the conditional approval of the plat before such improvements and
8 installations have been constructed, but any such conditional approval shall not be entered upon the
9 plat.

10 (b) Shall provide that, in lieu of the completion of street work and utility installations
11 prior to the final approval of a plat, the planning board shall accept a performance bond, irrevocable
12 letter of credit, or other type or types of security as shall be specified in the subdivision regulations;
13 provided that in no event shall the exclusive form of security required by the planning board be in
14 the form of cash or a passbook. As phases or portions of the secured improvements or installations
15 are completed and approved by the planning board or its designee, the municipality shall partially
16 release said security to the extent reasonably calculated to reflect the value of such completed
17 improvements or installations, **and the cost of remaining work, at least one time every 365**
18 **days or when substantial improvements are made.** Cost escalation factors that are applied by
19 the planning board to any bond or other security required under this section shall not exceed [10] 15
20 percent per year. **No cost increases shall be allowed for engineering, administration, or**
21 **other similar reasons.** The planning board shall, within the limitations provided in this
22 subparagraph, have the discretion to prescribe [the type and amount of security, and specify] a
23 period for completion of the improvements and utilities to be expressed in the bond or other security,
24 in order to secure to the municipality the actual construction and installation of such improvements
25 and utilities. The municipality shall have the power to enforce such bonds or other securities by all
26 appropriate legal and equitable remedies.

27 (c) May provide that in lieu of the completion of street work [and], utility installations,
28 **landscaping, and final pavement** prior to the final approval of the plat, the subdivision
29 regulations may provide for an assessment or other method by which the municipality is put in an
30 assured position to do said work and to make said alterations at the cost of the owners of the
31 property within the subdivision.

1 (d) *The planning board limitations under this paragraph shall not require*
 2 *letter of credit, cash, or passbook as the only method securing the completion of the work*
 3 *nor shall there be a requirement to bond installation of infrastructure, including but not*
 4 *limited to utilities and roads, prior to actual building structures for human occupation.*

5 (e) *Inspections required by the municipality for release of a bond shall be*
 6 *completed within 20 business days of written request delivered by hand or sent by courier*
 7 *or service. Any requirements not recognized by the municipality as complete or non-*
 8 *compliant shall require written notification be sent, delivered by hand or sent by courier or*
 9 *service, within 3 business days of the inspection, to the bonded party. The bonded party*
 10 *shall complete the work within 20 business days of receipt of notification. The*
 11 *municipality shall inspect for completion of the work cited as incomplete or non-compliant*
 12 *in the first inspection, within 2 business days of written notification delivered by hand or*
 13 *sent by courier or service. All bonds shall be released within 30 days of completion.*

14 IV. *In accordance with RSA 153:5, III*, the planning board shall not require, or adopt any
 15 regulation requiring, the installation of a fire suppression sprinkler system in proposed one- or 2-
 16 family residences as a condition of approval for a local permit. Nothing in this paragraph shall
 17 prohibit a duly adopted regulation mandating a cistern, dry hydrant, fire pond, or other credible
 18 water source other than a fire suppression sprinkler system. ~~[Nothing in this paragraph shall~~
 19 ~~prevent an applicant from offering to install fire suppression sprinkler systems in proposed one- or 2-~~
 20 ~~family residences and, if the planning board accepts such offer, the installation of such systems shall~~
 21 ~~be required and shall be enforceable as a condition of the approval. The applicant or the applicant's~~
 22 ~~successor in interest may substitute another means of fire protection in lieu of the approved fire~~
 23 ~~suppression sprinkler system provided that the planning board approves the substitution which~~
 24 ~~approval shall not be unreasonably upheld or delayed.]~~

25 2 Effective Date. This act shall take effect 60 days after its passage.

SB 78- FISCAL NOTE
 AS AMENDED BY THE SENATE (AMENDMENT #2023-0810s)

AN ACT relative to subdivision regulations on the completion of improvements.

FISCAL IMPACT: State County Local None

LOCAL:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Revenue	\$0	Indeterminable	Indeterminable	Indeterminable
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill establishes requirements and limits on the security required for street work and utility installations, landscaping, final pavement, and fire suppression systems under subdivision regulations regarding completion of improvements prior to final approval as well as modifies the bond language for municipalities.

The New Hampshire Municipal Association (NHMA) states requiring partial release of bonds to the extent reasonably calculated to reflect the value of such completed improvements or installations at least one time every 365 days or when substantial improvements are made may result in additional administrative costs. NHMA also notes the cost escalation factor of 15% may increase the cover that municipalities have in the event of needing to call a bond. The increased escalation factor may result in an indeterminable increase in revenue if a bond is called. Limiting the aspects of construction for which bonding may be required may also increase local expenditures as municipalities may be required to pay for those costs rather than have them covered by a bond, if a developer fails to complete the project. The costs and revenues will vary by municipality as each will have different numbers of projects and different valuations of projects that are not seen to completion by developers. This bill may have an indeterminable impact to local revenues and expenditures.

It is assumed any fiscal impact will occur after FY 2023.

AGENCIES CONTACTED:

New Hampshire Municipal Association