

The Commonwealth of Massachusetts



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

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WILLIAM F. WELD
GOVERNOR

ARGEO PAUL CELLUCCI
LIEUTENANT GOVERNOR

June 23, 1995

To the Honorable House of Representatives:

Pursuant to Part the Second, Chapter I, Article II of the Constitution of the Commonwealth of Massachusetts, I am returning unsigned House Bill No. 4778, "An Act Relative to Impact Fees for the Town of Franklin."

This legislation is intended to permit the Town of Franklin to adopt an impact fee by-law. Proponents of the bill argue that a high level of new development in Franklin will generate significant new municipal infrastructure costs and that impact fees are necessary to recover these costs from developers.

To the extent that the bill authorizes the establishment of a fee, legislative authorization is not required. Under the Home Rule Amendment to the Constitution of the Commonwealth, any city or town may by ordinance or by-law exercise any function -- including, I believe, the establishment of a fee -- that is not inconsistent with the Constitution or any law.

In addition, and most troubling, although the legislation speaks of a "fee," the bill is broad enough to permit the adoption of a development tax. See Emerson College v. Boston, 391 Mass. 415 (1984) (outlining the difference between a tax and a fee). Such a new tax would circumvent Proposition 2½, and would be completely unacceptable.

For these reasons, I have determined to return this legislation unsigned.

Respectfully submitted,

A handwritten signature in cursive script that reads "William F. Weld".

William F. Weld
Governor

