

**STATE OF NEW HAMPSHIRE**  
**COMPLIANCE WITH CERTAIN SECTIONS**  
**OF RSA 9 RELATED TO THE USE OF**  
**HIGHWAY FUNDS**

**JUNE 2014**



*To The Fiscal Committee Of The General Court:*

We conducted an audit of the State's compliance with certain sections of RSA 9 related to the use of Highway Funds. The audit period was the nine months ended March 31, 2014.

The purpose of the audit was to determine if State departments complied with: RSA 9:4-d, *Requests for Appropriations From the Highway Fund*; RSA 9:9-a, *Collection of Highway Fund Revenue; Reporting Requirement*; RSA 9:9-b, *Allocation of Gross Appropriations From Highway Fund*; and RSA 9:9-c, *Reporting Requirement for Departments That Receive Highway Funds*.

Our findings are included in the report that follows.



Office Of Legislative Budget Assistant

June 2014

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RSA 9 RELATED TO THE USE OF HIGHWAY FUNDS**

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This report can be accessed in its entirety on-line at:  
<http://www.gencourt.state.nh.us/LBA/AuditReports/financialreports.aspx>

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\* Comment suggests legislative action may be required.

**STATE OF NEW HAMPSHIRE  
COMPLIANCE WITH CERTAIN SECTIONS OF  
RSA 9 RELATED TO THE USE OF HIGHWAY FUNDS**

**EXECUTIVE SUMMARY**

The objective of this audit was to review State departments' compliance with RSA 9:4-d, RSA 9:9-a, RSA 9:9-b, and RSA 9:9-c relative to requests for appropriations from the Highway Fund, the cost of collection of Highway Fund revenue, the allocation of gross appropriations from the Highway Fund, and reporting by departments that receive Highway Funds, respectively. The audit period was the nine months ended March 31, 2014.

We conducted our work in accordance with auditing standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings.

***SUMMARY OF RESULTS***

We found compliance with RSA 9:4-d, was not consistent among State departments. The statute requires most state agencies requesting appropriations from the Highway Fund to report appropriate program measures, which support the use of the funds being requested, to the Commissioner of the Department of Administrative Services (DAS) by October 1 of each biennial legislative session. The statute also requires State departments that request the use of Highway Funds to develop and implement a cost allocation plan and to maintain records to support their use of those funds. While we found general compliance with the requirement to maintain records to support expenditures, departments generally did not fully complete or submit Cost Allocation Worksheets timely. The Worksheet form provided to State departments by the DAS for this reporting does not provide definitions or other guidance to promote compliance. For example, the Worksheet does not clearly define what information departments are required to file or provide guidance for determining and reporting appropriate program measures.

We found the Department of Safety's (DOS) processing of Highway Funds to be noncompliant with RSA 9:9-a, as the DOS' costs of collection and administration of Highway Funds are not deducted before such funds are credited to the Highway Fund as required by the statute. However, the State operating budget appropriates Highway Funds to the DOS for its costs associated with the collection and administration of Highway Funds, negating the need for any deduction. As a result, all Highway Funds collected by the DOS are credited directly to the Highway Fund. We found further noncompliance with RSA 9:9-a's provisions requiring the DOS to provide an annual accounting of the costs of collection and administration of Highway Funds, and the suspension of the DOS' Highway Fund funding if a cost report is not filed.

No compliance testing was performed with respect to RSA 9:9-b for the allocation of gross appropriations from the Highway Fund, as Chapter 144:17 of the Laws of 2013 suspended RSA 9:9-b for the biennium ending June 30, 2015.

Finally, we found general noncompliance with RSA 9:9-c regarding reporting requirements for departments of the executive and judicial branches that receive Highway Funds. The DAS had not formatted a report for department use in RSA 9:9-c reporting, departments had not reported Highway Funded programs, and Highway Fund transfers had not been halted as a result of the noncompliance, all of which are required by the statute. In early March 2014, subsequent to auditor inquiry, the DAS requested all departments of the Executive and Judicial Branches that receive Highway Fund transfers to submit reports by March 31, 2014.

## **BACKGROUND**

Pursuant to the New Hampshire State Constitution, Part II [Art.] 6-a. [Use of Certain Revenues Restricted to Highways.], “All revenue in excess of the necessary cost of collection and administration accruing to the state from registration fees, operators’ licenses, gasoline road tolls or any other special charges or taxes with respect to the operation of motor vehicles or the sale or consumption of motor vehicle fuels shall be appropriated and used exclusively for the construction, reconstruction and maintenance of public highways within this state, including the supervision of traffic thereon and payment of the interest and principal of obligations incurred for said purposes; and no part of such revenues shall, by transfer of funds or otherwise, be diverted to any other purpose whatsoever.”

RSA 9:4-d, RSA 9:9-a, RSA 9:9-b, and RSA 9:9-c are, in part, intended to ensure State Highway Funds are used in compliance with the State Constitution.

## **AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY**

### Audit Objectives

1. **RSA 9:4-d** - To determine the extent to which all departments of the State, except the Department of Transportation and the Judicial Branch, requesting appropriations from the Highway Fund comply with the provisions of this statute which require:
  - a report, on blanks to be furnished by the Commissioner of Administrative Services, of program measures supporting the use of Highway Funds being requested
  - the development and implementation of a cost allocation plan and maintenance of such records to support their expenditure of Highway Funds to include, but not be limited to, revising the integrated system of government cost accounting and financial reporting from which it shall be possible to obtain accurate annual and interim financial statements and other reports which present fairly and with full disclosure the use of Highway Funds.

2. **RSA 9:9-a** - To determine the extent to which the Department of Safety (DOS) complies with the provisions of this statute which require:
  - the DOS to deduct the costs associated with the collection and administration of Highway Funds by the DOS before such funds are credited to the Highway Fund
  - the DOS to provide, on or before January 1, an annual accounting of such administration and collection costs to the President of the Senate and the Speaker of the House of Representatives
  - no current fiscal year collection or administration costs shall be expended until the previous year's collection cost report has been received.
  
3. **RSA 9:9-b** – To determine the extent to which gross Highway Fund revenues are allocated in the operating budget as follows:
  - Department of Transportation, including the Office of Information Technology: Not less than 73 percent
  - DOS: Not to exceed 26 percent
  - Other projects that comply with Part 2, Article 6-a of the New Hampshire Constitution: Not to exceed 1 percent.
  
4. **RSA 9:9-c** - To determine the extent to which all departments of the Executive and Judicial Branches that receive Highway Funds comply with the provisions of this statute which require:
  - a report to be filed with the Commissioner of Administrative Services (Commissioner) on or before January 1 of each year for the previous fiscal year. The format to be determined by the Commissioner, in a format similar to reports filed pursuant to RSA 9:4-d, which includes:
    - a description of each of the programs supported by the Highway Fund
    - actual expenditures incurred by programs supported in whole or in part by the Highway Fund transfers compared to amounts budgeted for those purposes
  - no Highway Fund transfers shall be disbursed to the department if a report required under this section has not been filed for the preceding year.

#### Audit Scope

The scope of our audit included the determination of State compliance with certain sections of RSA 9, including: RSA 9:4-d, *Requests for Appropriations From the Highway Fund*, RSA 9:9-a *Collection of Highway Fund Revenue; Reporting Requirement*, RSA 9:9-b *Allocation of Gross Appropriations From Highway Fund*, and RSA 9:9-c *Reporting Requirement for Departments That Receive Highway Funds*. The audit period was July 1, 2013 through March 31, 2014.

## Audit Methodology

1. Review relevant State statutes.
2. Review relevant State policies and procedures.
3. Review agency policies and procedures for adequacy with regard to the use of Highway Funds.
4. Interview agency personnel.
5. Review relevant agency documentation including:
  - Reporting, for example, State accounting system (NHFirst) reports and State operating budgets
  - Other documentation supporting compliance with RSA 9:4-d, RSA 9:9-a, RSA 9:9-b, and RSA 9:9-c.
6. Assess compliance through tests of documentation.

### **PRIOR AUDIT**

No prior audits specifically addressed compliance with RSA 9:4-d, RSA 9:9-a, RSA 9:9-b, and RSA 9:9-c. The Office of Legislative Budget Assistant did issue a performance audit titled *Review of the Allocation of Highway Fund Resources to Support Agencies and Programs*, dated March 1988. That report can be accessed on-line at:  
<http://www.gencourt.state.nh.us/LBA/AuditReports/performance-reports.aspx>

## FINDINGS AND RECOMMENDATIONS

### Observation No. 1: Improve Reporting Of Program Measures And Cost Allocation Plans

#### *Observation:*

The Department of Administrative Services (DAS) complied with RSA 9:4-d, I, by furnishing the Cost Allocation Worksheet form for department reporting of the use of Highway Funds. However, DAS' Cost Allocation Worksheet form could be better designed to promote department reporting of RSA 9:4-d, I, compliant data.

We reviewed copies of all 46 Cost Allocation Worksheets submitted by six departments for the most recent reporting at the time of the audit. The reviewed Worksheets were due on October 1, 2012, prior to the 2014-2015 biennial legislative session. We noted the following in that review:

- Timeliness and Agency Signature:
  - One department, the Board of Tax and Land Appeals, prepared its signed Worksheet timely.
  - Two departments prepared a total of 40 signed Worksheets untimely: the Department of Safety (38) and the Department of Environmental Services (2).
  - Three departments prepared a total of five unsigned and undated Worksheets: the Department of Justice (3), the Department of Health and Human Services (1), and the Highway Safety Agency (1).
- Program Measure: Twenty-three of the 46 filed Worksheets filed did not include sufficient program measure information and other data to evidence clear support for the use of the requested Highway Funds: the Department of Safety (22) and the Department of Environmental Services (1).
- Departments Required to File: One department, the Department of Resources and Economic Development (DRED), received Highway Fund funding through the State's Operating Budget and did not file a Worksheet. DAS reported it considers this funding to be based on a vendor relationship with the Department of Transportation and did not expect DRED to file a Worksheet. It is unclear whether DRED is required to file a Worksheet in support of this funding, pursuant to RSA 9:4-d, I.

The DAS reported it reviews the submitted Worksheets for reasonableness by comparing the reported prior fiscal year expenditures to the subsequent years' requested amounts, for example. However, the DAS reported it does not evaluate the basis and accuracy of program measures supporting the reported and planned use of Highway Funds, and does not request departments to resubmit forms that are unsigned or otherwise incomplete. The DAS reported it forwards copies of the Worksheets to the Governor's Office.

*Recommendation:*

The DAS should review, and revise as appropriate, the Cost Allocation Worksheet form it furnishes to departments for RSA 9:4-d reporting to ensure the form promotes the reporting of complete and compliant data. If necessary, the DAS should request legislative clarification as to the criteria for the information required to be filed.

The DAS should provide instructions, including definitions and example data, to assist departments in completing the Cost Allocation Worksheet.

Departments should submit timely, complete, and otherwise compliant Cost Allocation Worksheets. The DAS should review submitted Worksheets for completeness and compliance as well as timeliness. The DAS should request departments correct incomplete or otherwise noncompliant Worksheets.

*Department of Administrative Services Response:*

We concur.

The Department will take the required steps to provide the necessary feedback, guidance and instructions to the agencies responsible for completing the Cost Allocation Worksheet. The form will be reviewed and adjusted to ensure complete and compliant data required by RSA 9:4-d. Submitted Cost Allocation Worksheets will not be accepted which are not complete, signed and correct.

**Observation No 2: Improve Support For Cost Allocation Plans**

*Observation:*

Auditors noted certain weaknesses in the cost allocations identified on Cost Allocation Worksheets submitted pursuant to RSA 9:4-d by two departments. These weaknesses raise concerns about the appropriateness of the submitted data.

1. The cost allocation plan reported by the Department of Safety (DOS) to allocate certain indirect costs was not fully defined and supported.

The DOS' indirect cost allocation plan apportions certain department shared-service costs (e.g., Office of Policy, Office of the Commissioner), funded by the Highway Fund, to the DOS accounting units funded by other dedicated funds (e.g. Homeland Security and Emergency Management, Emergency Services). The DOS' fiscal year 2014 budget plan allocated \$1.8 million of shared-service costs to the dedicated fund accounts and \$3.8 million to Highway Fund funded accounts based on activity percentages or "weights" for various categories of costs. The DOS stated its methodology for calculating the weights was "not specifically defined." The lack of documentation supporting the calculation of the "weights,"

increases the risk that DOS' allocation of those costs to the accounts may not reflect the actual efforts or allocation of resources.

2. The allocation of costs to the Highway Fund reported by the Department of Environmental Services (DES) was primarily based on a 1937 agreement with the Department of Transportation (DOT). It is unclear whether the percentage established in 1937 continues to have relevance.

*Recommendation:*

1. The DOS should review and further define its allocation methodology to ensure all aspects of the calculation are appropriately documented and supported.
2. The DES should update the 1937 agreement with the DOT to ensure allocation percentages remain relevant and reflective of current operations.

*Department of Safety Response:*

We concur.

It is important to note that this Observation does not question the documentation or support of our cost allocation plan itself, rather it points out the lack of documentation related to the determination of the "weights" or the emphasis placed on the statistics used in the calculation of the amounts to allocate.

While the methodology for the determination of "weights" was not documented, several factors were carefully considered in their determination including the complexity of the process and number of personnel involved. The effect of each statistic or effort related to each function cannot be mathematically calculated; rather they require a subjective determination. Such a determination was completed, it was simply not documented. The Department has since taken steps to document its determination of the weights.

*Department of Environmental Services Response:*

DES concurs with this recommendation and has begun discussions with the DOT to develop an updated cost-allocation agreement between DES and DOT for the State's share of costs for stream gaging under the Cooperative Streamflow Gaging Program with the United States Geological Survey (USGS). The state's participation in the USGS Cooperative Streamflow Gaging Program is authorized under RSA 482:85. Under the Cooperative Streamflow Gaging Program, the USGS operates and maintains gaging stations throughout New Hampshire and collects and publishes data on the flows in rivers and streams in the state. The data is used to support emergency response, flood control and water management, planning activities, permitting, and hydraulic structure design. DOT's primary use of the data is in support of their design of highway bridges and road culverts. DOT's estimates of the design floods for these structures, whether they are for a flood with a 10, 25, 50 or 100 year return interval, are based on the data obtained from the Cooperative Streamflow Gaging Program. Because of this use, DOT

recognizes the need to maintain the program and has agreed to meet with DES to develop an updated cost allocation agreement.

**Observation No. 3: Clarify Department Of Safety Processes For Collecting, Administering, Recording, And Reporting Highway Fund Revenues**

*Observation:*

The Department of Safety (DOS) did not comply with RSA 9:9-a, in recording and reporting Highway Fund revenues collected by the DOS during the nine months ended March 31, 2014.

Historically, there has been an inconsistency between the State Operating Budget (Budget) and RSA 9:9-a with regard to the DOS' recording of Highway Fund revenues and the costs for collecting and administering that revenue. The DOS historically has recorded Highway Fund revenues in accordance with the Budget and not in compliance with RSA 9:9-a.

- Pursuant to RSA 9:9-a, “any costs associated with the collection and administration of Highway Funds by the department of safety shall be deducted by the department before such funds are credited to the highway fund.” Consistent with the Budget, all Highway Fund revenues collected by the DOS are recorded as Highway Fund revenue without the need for deducting its costs. The DOS receives appropriations from the Highway Fund to support the DOS' costs to collect and administer those funds.

The DOS processed and credited Highway Fund revenues in accordance with the State Operating Budget during the nine months ended March 31, 2014. According to the DOS, it has never processed and credited Highway Fund revenues in the manner described in RSA 9:9-a. While the DOS was out of compliance with the revenue process described in RSA 9:9-a during the nine months ended March 31, 2014, there was no effect on the amount of revenue available to the Highway Fund.

According to the DOS, it has never provided the annual accounting and reporting required by RSA 9:9-a, and it has never received any request or inquiry regarding its lack of reporting. The information that would be included on a report is largely available in State accounting system (NHFirst) reports. Despite noncompliance with the statute's reporting requirement, the DOS' use of Highway Funds for collection and administration costs has never been affected, contrary to RSA 9:9-a.

*Recommendation:*

The DOS should request legislative clarification of its responsibilities under RSA 9:9-a for recording and reporting Highway Fund revenues and the costs for collecting and administering that revenue.

The DOS should provide the annual accounting and reporting of its costs of collecting and administering Highway Funds required by RSA 9:9-a. If the DOS determines the accounting and

reporting required by RSA 9:9-a is not useful, the DOS should request RSA 9:9-a be appropriately amended.

*Department of Safety Response:*

We concur.

Historically, there has been a question of how to properly quantify the total cost of collection and administration. It is difficult to determine the participation of Department-wide administrative personnel, such as employees of the Business Office, in the cost of collection and administration of the Highway Fund. While those functions clearly support collection and administration of Highway Funds through functions such as revenue reconciliation, collection of protested items, payment of invoices, payroll and human resources functions, it is difficult to quantify the degree to which these functions specifically relate to the cost of collections and administration of Highway Funds.

For those reasons, the Department continued to process revenues in accordance with the State Operating Budget and has received no guidance or feedback related to this practice.

The Department will work towards a legislative clarification of its responsibilities under RSA 9:9-a.

**Observation No. 4: Establish Process For RSA 9:9-c Reporting**

*Observation:*

Prior to March 2014, the Department of Administrative Services (DAS) had not established a form or a process for departments to report information required by RSA 9:9-c. Paragraph I of RSA 9:9-c requires departments to report by January 1 of each year a description of each program supported by Highway Funds and a comparison of actual and budgeted expenditures incurred by programs supported in whole or in part by the Highway Fund for the preceding fiscal year. RSA 9:9-c, II, further directs that no Highway Fund transfers shall be disbursed to an entity that had not submitted a report required under the section for the preceding fiscal year. The statute directs the DAS to determine a form for department filing. The statute does not provide the DAS direction for the disposition or distribution of the information.

Subsequent to an audit inquiry, the DAS created a form for RSA 9:9-c reporting and in early March 2014 requested all departments of the executive branch and the judicial branch that receive Highway Fund transfers to submit completed forms by March 31, 2014. The DAS reported it intended to accept and file the reports for future reference.

According to the DAS, prior to March 31, 2014, departments had never filed reports required by RSA 9:9-c with DAS. The lack of filed reports had not prevented transfers of Highway Funds to departments, contrary to RSA 9:9-c, II.

*Recommendation:*

The DAS should request legislative clarification of its responsibilities under RSA 9:9-c, including any responsibilities related to the transfer of Highway Funds under RSA 9:9-c, II.

Pending legislative direction to the contrary, the DAS should encourage departments to comply with the reporting requirements of RSA 9:9-c.

The DAS should consider whether information responsive to the statute can be made available from the State's integrated financial system, NHFirst, to lessen the burden on departments to manually complete reporting forms.

*Department of Administrative Services Response:*

We concur that legislation is necessary to clarify what is being directed.

It is unclear from reading RSA 9:9-c which funding is to be withheld from agencies who have not filed the necessary reports related to the transfer of Highway Funds under RSA 9:9-c and the timeframes affected. The consequences of withholding funding for an agency or program could result in the termination of vital services which the citizens of the state depend upon and it is unclear if that is the action the legislature wishes be taken for the late filing of a form or the absence of filing.

In the absence of legislative clarification, we will encourage departments to comply with the reporting requirement.

## APPENDIX

### Text Of Relevant Law

#### State Constitution, Part II

**[Art.] 6-a. [Use of Certain Revenues Restricted to Highways.]** All revenue in excess of the necessary cost of collection and administration accruing to the state from registration fees, operators' licenses, gasoline road tolls or any other special charges or taxes with respect to the operation of motor vehicles or the sale or consumption of motor vehicle fuels shall be appropriated and used exclusively for the construction, reconstruction and maintenance of public highways within this state, including the supervision of traffic thereon and payment of the interest and principal of obligations incurred for said purposes; and no part of such revenues shall, by transfer of funds or otherwise, be diverted to any other purpose whatsoever.

*November 29, 1938*

#### Section 9:4-d

##### **9:4-d Requests for Appropriations From the Highway Fund.**

I. On or before October 1 prior to each biennial legislative session all departments of the state, except the department of transportation, and the judicial branch requesting appropriations from the highway fund shall transmit to the commissioner of administrative services, on blanks to be furnished by the commissioner, appropriate program measures which support the use of highway funds being requested. This data shall reflect the volume of activity within each accounting unit directly related to highway activity.

II. All departments of the state subject to paragraph I shall develop and implement a cost allocation plan and maintain such records as are necessary to support their expenditures of highway funds. These records shall include, but not be limited to, revising the integrated system of government cost accounting and financial reporting which accurately and systematically accounts for all expenditures of highway funds within budget and appropriations and from which it shall be possible to obtain accurate annual and interim financial statements and other reports which present fairly and with full disclosure the use of highway funds.

**Source.** 1993, 358:105. 2007, 133:1. 2012, 247:3, eff. Aug. 17, 2012.

#### Section 9:9-a

**9:9-a Collection of Highway Fund Revenue; Reporting Requirement.** Pursuant to part II, article 6-a of the New Hampshire constitution, any costs associated with the collection and administration of highway funds by the department of safety shall be deducted by the department before such funds are credited to the highway fund. On or before January 1 the department shall provide an annual accounting of such administration and collection costs to the president of the

senate and the speaker of the house of representatives. No current fiscal year collection or administration costs shall be expended until the previous year's collection cost report has been received.

**Source.** 2003, 263:1. 2005, 177:3, eff. July 1, 2005.

### **Section 9:9-b**

*[RSA 9:9-b suspended for the biennium ending June 30, 2015 as provided by 2013, 144:17.]*

**9:9-b Allocation of Gross Appropriations From Highway Fund.** For each fiscal year of the biennium, gross highway fund appropriations net of highway block grant aid, shall be allocated in the operating budget as follows:

- I. Department of transportation, including the office of information technology: Not less than 73 percent.
- II. Department of safety: Not to exceed 26 percent.
- III. Other projects that comply with part 2, article 6-a of the New Hampshire constitution, relative to the use of highway funds: Not to exceed 1 percent.

**Source.** 2003, 263:1. 2008, 237:1, eff. July 1, 2009; 237:2, eff. July 1, 2011; 237:3, eff. July 1, 2013.

### **Section 9:9-c**

**9:9-c Reporting Requirement for Departments That Receive Highway Funds.** All departments of the executive branch and the judicial branch that receive highway fund transfers for any purpose shall file a report with the commissioner of administrative services on or before January 1 of each year for the preceding fiscal year. The format of the report shall be determined by the commissioner and shall be in a format similar to reports filed pursuant to RSA 9:4-d.

I. The report shall include:

- (a) A description of each of the programs supported by highway funds.
- (b) Actual expenditures incurred by programs supported in whole or in part by the highway fund transfers compared to amounts budgeted for those purposes.

II. No highway fund transfers shall be disbursed to a department of the executive branch or the judicial branch if the department or judicial branch has not filed the report required under this section for the preceding fiscal year.

**Source.** 2003, 263:1. 2007, 32:1, eff. July 13, 2007.