STATE IMPACT FEE ENABLING ACTS

Impact fees were pioneered by local governments in the absence of explicit state enabling legislation. Consequently, such fees were originally defended as an exercise of local government's broad "police power" to protect the health, safety and welfare of the community. The courts gradually developed guidelines for constitutionally valid impact fees, based on a "rational nexus" that must exist between the regulatory fee or exaction and the activity that is being regulated. Texas adopted the first general impact fee enabling act in 1987. To date, 29 states have adopted impact fee enabling legislation (for other than water and wastewater fees). These acts have tended to embody the constitutional standards that have been developed by the courts.

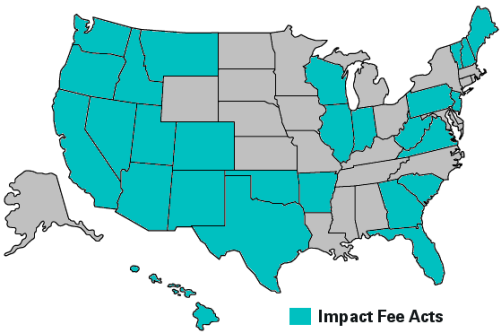

Table 1: STATE IMPACT FEE ENABLING ACTS

State	Year	Citation
Arizona	1988	Ariz. Rev. Stat. Ann., § 9-463.05 (cities), § 11-1102 et seq. (counties)
Arkansas	2003	Arkansas Code, § 14-56-103 (cities only)
California	1989	Cal. Gov't Code, § 66000 et seq. (mitigation fee act); § 66477 (Quimby Act for park dedication/fee-in-lieu); § 17620 et. seq. (school fees)
Colorado	2001	Colo. Rev. Stat., § 29-20-104.5; § 29-1-801804 (earmarking requirements); § 22-54-102 (school fee prohibition)
Delaware	2001	Del. Code Ann., Title 29, §§ 9121-9125 (state & counties)
Florida	2006	Florida Stat., § 163.31801
Georgia	1990	Georgia Code Ann., § 36-71-1 et seq.
Hawaii	1992	HI Rev. Stat., § 46-142 et seq. (cities); § 264-121 et seq. (co.); § 320 (state-schools)
Idaho	1992	Idaho Code, § 67-8201 et seq.
Illinois	1987	605 Illinois Comp. Stat. Ann., § 5/5-901 et seq.
Indiana	1991	Indiana Code Ann., § 36-7-4-1300 et seq.
Maine	1988	Maine Rev. State. Ann., Title 30-A, § 4354
Maryland	1992	Maryland Code, Art. 25B, § 13D (code home rule counties only)
Montana	2005	Montana Code Annotated, Title 7, Chapter 6, Part 16
Nevada	1989	Nevada Rev. Stat., § 278B
New Hampshire	1991	New Hampshire Rev. Stat. Ann., § 674:21
New Jersey	1989	New Jersey Perm. Stat., § 27:1C-1 et seq.; § 40:55D-42
New Mexico	1993	New Mexico Stat. Ann., § 5-8-1 et seq.
Oklahoma	2011	Oklahoma Statutes, § 62-895
Oregon	1991	Oregon Rev. State, § 223.297 et seq.
Pennsylvania	1990	Pennsylvania Stat. Ann., Title 53, § 10502-A et seq.
Rhode Island	2000	General Laws of Rhode Island, §45-22.4
South Carolina	1999	Code of Laws of South Carolina, § 6-1-910 et seq.
Texas	1987	Texas Local Goverrnment Code Ann., Title 12, § 395.001 et seq.
Utah	1995	Utah Code, § 11-36-101 et. seq.
Vermont	1989	Vermont Stat. Ann., Title 24, § 5200 et seq.
Virginia	1990	Virginia Code Ann., § 15.2-2317 et seq.
Washington	1991	RCW, § 82.02.050 et seq.
West Virginia	1990	West Virginia Code, § 7-20-1 et seq. (counties)
Wisconsin	1993	Wisconsin Stats., § 66.0617

Until 2006, Florida was the only state with widespread use of impact fees but no state enabling legislation. The 2006 legislation is not a true enabling act, since the authority of local governments to impose impact fees had been long established through case law. The legislation imposes only minimal requirements, but cities

and counties in the state were wary that future legislatures will amend the law to impose more significant limitations on their impact fee authority. This has in fact happened.

In some states that lack a general enabling act, such as Maryland (except for six code home rule counties), Tennessee and North Carolina, impact fees are authorized for individual jurisdictions through special acts of the legislature. A number of Maryland charter counties have been granted the authority to impose school impact fees, making Maryland the state with the fourth-highest number of school impact fees, after California, Florida and Washington. In Tennessee, cities with mayor-aldermanic charters have the authority to impose impact fees without special authorizing legislation. In North Carolina, no new grants of impact fee authority have been approved by the legislature in years.

In addition to road impact fees, Virginia has a formalized system of developer exactions, known as cash proffers, that functions somewhat like impact fees. However, the proffer system does differ significantly in that there is no required nexus study or published fee schedule. Instead, developers "voluntarily" offer land dedications, capital improvements or cash payments as part of their application for rezoning, which may or may not be granted depending in part on whether the local governing body feels that the proffers sufficiently mitigate the project's impacts. In essential characteristics, then, Virginia's proffer system is closer to negotiated developer exactions used by many communities across the country than it is to an impact fee system.

Basic Impact Fee Principles

Impact fees were pioneered by local governments in the absence of explicit state enabling legislation. Consequently, such fees were originally defended as an exercise of local government's broad "police power" to protect the health, safety and welfare of the community. The courts gradually developed guidelines for constitutionally valid impact fees, based on a "rational nexus" that must exist between the regulatory fee or exaction and the activity that is being regulated. The guiding principles developed in case law have been incorporated into state impact fee enabling acts to some degree. Some state acts have just borrowed terminology from case law, while others elaborate on the guidelines more explicitly.

Almost all of the state enabling acts contain words or phrases that indicate that impact fees should only charge new developments for the capital costs that they actually impose on the community. A number of different terms are used to express this sentiment. Arizona's act, for example, states that impact fees "must bear a reasonable relationship to the burden imposed ... to provide additional necessary public services to the development." Georgia's act states that new development cannot be required to pay "more than its proportionate share of the cost of public facilities needed to serve new growth." Many acts use multiple terms. For example, "proportionate share" is often defined as the cost of improvements that "reasonably relates" to the needs created by growth. The majority of the state acts use one or more of the terms "proportionate share," "reasonable relationship" (or "reasonably related" or "reasonably attributable") or "necessitated by and attributable to."

While there is virtual unanimity among the state acts that impact fees should only require new development to pay for the cost of improvements that are reasonably related to its impacts, not all of them are clear on what this means. One of the things it should mean is that impact fees should not charge new development for a higher level of service than is provided to existing development. If the fees are based on a higher level of service than is provided to existing development in the community, other funding must be identified to remedy the existing deficiencies. This principle is expressed colloquially in the saying, "impact fees should not be used to pay for the sins of the past." Not all of the enabling acts are clear on this point, but a majority of the acts do codify this principle in one way or another, as evidenced by the following examples:

> Arizona: "Costs for necessary public services made necessary by new development shall be based on the same level of service provided to existing development in the service area." (Sec. 9-463.05.B.4, Ariz. Rev. Statutes)

> California: "A fee shall not include the costs attributable to existing deficiencies in public facilities ..." (Sec. 66001(g), California Government Code)
>
> Colorado: "No impact fee or other similar development charge shall be imposed to remedy any deficiency in capital facilities that exists without regard to the proposed development." (Sec. 29-20-104.5(2), Colo. Rev. Stat.)
>
> Georgia: "Development impact fees shall be calculated on the basis of levels of service for public facilities that are adopted in the municipal or county comprehensive plan that are applicable to existing development as well as the new growth and development." (Sec. 36-71-4(c), Ga. Code Ann.).
>
> Montana: "New development may not be held to a higher level of service than existing users unless there is a mechanism in place for the existing users to make improvements to the existing system to match the higher level of service." (7-6-1602.5(d), Montana Code Ann.)
>
> Utah: "... the local political subdivision may not impose an impact fee to cure deficiencies in public facilities serving existing development." (11-36-202(4), Utah Code)

A corollary principle is that new development should not have to pay more than its proportionate share when multiple sources of payment are considered. This principle is often expressed informally as "new development should not be charged twice for the same facilities." Virtually all of the state enabling acts require construction credits for developments that make in-kind contributions, such as the dedication of property or construction of improvements. The reduction of impact fees on a case-by-case basis for a particular development to account for such contributions is known as a "construction credit." All but four of the 29 state acts explicitly require that developers be given reimbursements or credits for in-kind contributions for the same type of capital facility costs covered by the impact fee. South Carolina's act words this principle as follows:

> "A developer required to pay a development impact fee may not be required to pay more than his proportionate share of the costs of the project, including the payment of money or contribution or dedication of land, or to oversize his facilities for use of others outside of the project without fair compensation or reimbursement." (Sec. 6-1-1000, Code of Laws of S.C.)

Other sources of payment could include future property taxes that will be generated by the new development and used to pay debt service on existing facilities, or sales tax revenues earmarked to remedy existing deficiencies in facilities serving existing development. Since there is no way to charge new development a lower property or sales tax rate than existing development, the solution is to reduce the impact fees by an amount equivalent to the future payments. Such a reduction is referred to as a "revenue credit." A majority of the state enabling acts explicitly require consideration of revenue credits. California stands out as the one state where revenue credits are generally not provided (this may be due to the interpretation of state courts). However, those acts that do mandate consideration of revenue credits often provide little guidance on how this should be accomplished. Georgia's act provides more guidance than most, although some would argue it goes beyond what would be required by rational nexus principles in its focus on past funding patterns:

> "Development impact fees shall be calculated on a basis which is net of credits for the present value of revenues that will be generated by new growth and development based on historical funding patterns and that are anticipated to be available to pay for system improvements, including taxes, assessments, user fees, and intergovernmental transfers." (Sec. 36-71-4(r), Ga. Code Ann.)

Most of the acts require credits only for future revenues that will be generated by the new development in the future. However, six state acts require credits for past revenues generated before the property was developed as well (referred to as "past credits"). In most cases, such credits are limited to property taxes paid by vacant land and used to pay for the same type of facility.

The basic standards enunciated by the enabling acts for calculating impact fees are summarized in Table 2. Florida's act is the only one not to contain any guiding terms or standards, probably because these are well-articulated in that state's case law. Florida aside, it is interesting to note that there is not unanimity among the state acts on clearly spelling out even the most basic impact fee principles.

Table 2: BASIC STATE ENABLING ACT STANDARDS

State	Guiding Terms	No Higher LOS	Construction Credits	Revenue Credits	Past Credits
Arizona	reasonable relationship	explicit	explicit	explicit	
Arkansas	reasonably attributable				
California	reasonable relationship	explicit	explicit*	explicit*	
Colorado	directly related	explicit	explicit		
Florida	rational nexus**				
Georgia	proportionate share; reasonably related	explicit	explicit	explicit	
Hawaii	proportionate share; reasonably attributable	explicit	explicit	explicit	yes
Idaho	proportionate share; reasonably relates	explicit	explicit	explicit	
Illinois	proportionate share; specifically and uniquely attributable	explicit	explicit	explicit	yes
Indiana	proportionate share		explicit	explicit	
Maine	reasonably related		explicit		
Maryland	required to accommodate new construction				
Montana	proportionate share; reasonably relates	explicit	explicit	explicit	
Nevada	necessitated by and attributable to		explicit		
New Hampshire	proportionate share; reasonably related				
New Jersey	fair share; reasonably related	explicit	explicit		
New Mexico	proportionate share; necessitated by and attributable to		explicit		
Oklahoma	proportionate share		explicit	explicit	
Oregon	equitable share		explicit	explicit	
Pennsylvania	necessitated by and attributable to	explicit	explicit	explicit	
Rhode Island	proportionate share; reasonably relates	explicit	explicit		
South Carolina	proportionate share; reasonably relates	explicit	explicit	explicit	
Texas	necessitated by and attributable to	explicit	explicit	explicit	
Utah	prop. share; roughly proportionate; reasonably related	explicit	explicit	explicit	yes
Vermont	proportionate share		explicit		
Virginia	necessitated by and attributable to		explicit	explicit	yes
Washington	proportionate share; reasonably related	explicit	explicit	explicit	yes
West Virginia	proportionate share; reasonably attributed	explicit	explicit	explicit	yes
Wisconsin	proportionate share	explicit	explicit		

* developer credits explicit for road and park in-kind contributions; revenue credits explicit for special district taxes used to finance schools

** nothing in statute, but guiding case law uses imposes "dual rational nexus" test: "... the local government must demonstrate a reasonable connection, or rational nexus, between the need for additional capital facilities and the growth in population generated by the subdivision. In addition, the government must show a reasonable connection, or rational nexus, between the expenditures of the funds collected and the benefits accruing to the subdivision..." (Florida Supreme Court, 1991, St. Johns County v. Northeast Florida Builders Association, Inc., citing opinion of Florida District Court of Appeals in Hollywood, Inc. v. Broward County, 1983).

Eligible Facilities

One of the most important things that most enabling acts do is restrict the types of facilities for which impact fees may be imposed. The types of facilities that are eligible for impact fees in the various state acts are listed in Table 3. It would be more accurate to say that these are the types of impact fees that are not prohibited by the enabling acts.

An exception is water and wastewater impact fees. In most states, with or without impact fee enabling acts, local governments have the authority to require payment of a fee at the time of meter purchase or connection to the public utility system. The fact that the general impact fee enabling act in a state does not specifically authorize water and wastewater impact fees does not necessarily mean that such fees are prohibited. In fact, it is likely that such fees are authorized under a separate statute governing public utilities.

Table 3: FACILITIES ELIGIBLE FOR IMPACT FEES BY STATE

State	Roads	Water	Sewer	Storm Water	Parks	Fire	Police	Library	Solid Waste	School
Arizona (cities)	X	X	X	X	X	X	X	X		
Arizona (counties)	X	X	X		X	X	X			
Arkansas (cities)	X	X	X	X	X	X	X	X		
California	X	X	X	X	X	X	X	X	X	X
Colorado	X	X	X	X	X	X	X	X	X	
Delaware (counties)										
Florida	X	X	X	X	X	X	X	X	X	X
Georgia	X	X	X	X	X	X	X	X		
Hawaii	X	X	X	X	X	X	X	X	X	X
Idaho	X	X	X	X	X	X	X			
Illinois*	X									
Indiana	X	X	X	X	X					
Maine	X	X	X		X	X			X	
Maryland**	X	X	X	X	X	X	X	X	X	X
Montana	X	X	X	X	***	X	X	***	***	***
Nevada	X	X	X	X	X	X	X			****
New Hampshire	X	X	X	X	X	X	X	X	X	X
New Jersey	X	X	X	X						
New Mexico	X	X	X	X	X	X	X			
Oklahoma	X	X	X	X	X	X	X		X	
Oregon	X	X	X	X	X					*****
Pennsylvania	X									
Rhode Island	X	X	X	X	X	X	X	X	X	X
South Carolina	X	X	X	X	X	X	X	X	X	X
Texas (cities)	X	X	X	X						
Utah	X	X	X	X	X	X	X			
Vermont	X	X	X	X	X	X	X	X	X	X
Virginia	X	******	******	******	******	******	******	******	******	******
Washington	X				X	X				X
West Virginia	X	X	X	X	X	X	X			X
Wisconsin (cities)	X	X	X	X	X	X	X	X	X	

* road fees limited to counties with a population over 400,000 and all home rule municipalities
** explicit authority for code counties; 2004 attorney general opinion supports police power authority for municipalities
*** other fees can be imposed by two-thirds vote of city council or unanimous vote of county commission
**** school construction tax up to $1,600 per unit authorized in districts with populations up to 50,000
***** development tax of up to $1.00/sq. ft. for residential and $0.50/sq. ft. for nonresidential may be imposed by school districts
****** road fees explicitly authorized by statute; impact fees may be imposed on by-right residential subdivision of agriculturally-zoned parcels for a broad array of facilities under certain circumstances

Planning and Analysis Requirements

For the most part, state legislation does not establish maximum fees that can be charged. Instead, the state acts require, implicitly or explicitly, that a study or analysis be done to determine how to apply the "proportionate share" or other guiding standard in order to determine the maximum amounts that the local government can charge. The planning and analysis requirements of the various state impact fee enabling acts are summarized in Table 4. Note that eight of the 29 acts do not even explicitly require that a written analysis be performed. However, it is hard to imagine how compliance with the general impact fee principles expressed by the acts could be demonstrated without some kind of written report.

Many of the state acts require that the local government identify the "service area" where the impact fees will be collected based on the service provided to new development from a common set of facilities. Most acts require that impact fees collected within a service area must be spent on capital improvements within the same service area. In general, local governments are allowed broad discretion in defining service areas, which can cover the entire jurisdiction, or only a subarea of the city or county. An exception is the Texas act, which limits service areas for transportation impact fees to no more than six miles.

Two-thirds of the state acts require that the impact fees be based on a capital improvement plan. In some state acts, as in the original Texas act, the required "capital improvements plan" is both a list of projects to be funded with the impact fees and the written analysis used to calculate the impact fees. Some of these capital plan requirements simply mandate that a list of projects be developed on which the fees will be spent. Arkansas' act, for example, requires that the municipality adopt a "capital plan," which is defined as:

> "a description of new public facilities or of new capital improvements to existing public facilities or of previous capital improvements to public facilities that continue to provide capacity available for new development that includes cost estimates and capacity available to serve new development..." (Sec. 14-56-103(a)(1), Arkansas Code)

About half of the state acts require land use projections that cover the same period as the capital plan. The combination of these two requirements, the capital plan and growth projections, would seem to imply that impact fees in these states must be calculated using a "plan-based" (or "improvements-driven") methodology. Such a methodology determines capital improvements needed to accommodate projected growth over a fixed planning horizon, then divides the total improvement cost by the projected growth in service units to determine the gross impact fee (without consideration of revenue credits). Some states with these requirements, such as Texas, even specify that impact fee may not exceed the amount determined by dividing the costs of the capital improvements by the total number of projected service units. Yet, while these requirements do force the impact fee calculations to take the form of a plan-based methodology, in many cases the fees are actually based on a simple, system-wide ratio (e.g. 10 acres of park land per 1,000 residents), for which a plan-based methodology is not required.

One cannot calculate an impact fee without at least an implicit level of service standard. Without such a standard, it would not be possible to determine the impact of a new development on the need for capital facilities. However, only about half of the state acts require that the local government explicitly describe the level of service standards on which the impact fees are based. (Some states that do not mandate explicit levels of service do prohibit the use of impact fees from being used to remedy existing deficiencies, which in turn implies the use of a level of service standard.)

In an ideal world, impact fees would always be based on extensive planning. However, many communities, especially smaller ones, do not have the resources to prepare long-range facility master plans, and it is possible to calculate defensible impact fees in the absence of such planning documents. Intentionally or not, state acts with extensive planning requirements may make it more difficult for communities to adopt impact fees.

Table 4: STATE ENABLING ACT PLANNING REQUIREMENTS

State	Written Analysis	Service Areas	List of Projects	Growth Projections	LOS Standards
Arizona (cities)	yes	yes	yes	yes	yes
Arizona (counties)	yes		yes		
Arkansas	yes		yes		yes
California	yes		yes	yes	
Colorado					
Florida					
Georgia	yes	yes			yes
Hawaii					yes
Idaho	yes	yes	yes	yes	yes
Illinois	yes	yes	yes	yes	yes
Indiana	yes		yes	yes	yes
Maine					
Maryland					
Montana	yes	yes	yes	yes	yes
Nevada	yes	yes	yes	yes	
New Hampshire					
New Jersey	yes		yes	yes	
New Mexico	yes	yes	yes	yes	
Oklahoma	yes	yes	yes		
Oregon	yes		yes		
Pennsylvania	yes	yes	yes	yes	yes
Rhode Island	yes		yes		yes
South Carolina	yes	yes	yes	yes	yes
Texas	yes	yes	yes	yes	
Utah	yes	yes	yes		
Vermont	yes	yes	yes		yes
Virginia	yes	yes	yes	yes	
Washington		yes			
West Virginia					yes
Wisconsin	yes	yes	yes		

Substantive Requirements

A review of the state enabling acts reveals that, outside of the general principles and planning standards discussed above, there is little agreement about what form state regulation should take. State impact fee enabling acts impose both substantive and procedural requirements. Selected substantive provisions of the state acts are summarized in Table 5. The first column, showing the length of the various acts, illustrates that enabling acts range from brief grants of authority and statements of general principles (Arkansas, Florida, Maine, Maryland, Vermont, Wisconsin) to the lengthy, detailed and overlapping provisions of California's legislation.

About one-third of the enabling acts allow impact fees to be collected at any time during the development process. Most of the others provide that impact fees cannot be collected prior to the building permit or certificate of occupancy.

A majority of the state acts explicitly allow local governments to recoup costs incurred prior to the development, provided that the capacity is available to serve the development. It should be noted that recoupment fees are not necessarily prohibited by the state acts that do not explicitly authorize them. Rhode Island's act commonsensically provides that the portion of an impact fee deemed recoupment is exempted from provisions requiring expenditure in eight years (Sec. 45-22.4-5(c)). To the extent that the capital

improvement that the fees are paying for has already been paid for, recoupment fees can be returned to the general fund or used for whatever purpose the local government chooses.

Table 5: STATE ENABLING ACT SUBSTANTIVE PROVISIONS

State	Length (Word Count)	Time to Collect	Recoup-ment	Recalc. Reqm't	Platting Locks-in Fee?	Explicit Waivers	Waiver Funding Req'd?
Arizona (cities)	1,652	bldg. permit	yes	yes	2 years	schools*	yes
Arizona (counties)	887	anytime				schools*	
Arkansas	1,634	cert. of occ.	yes				
California	22,907	cert. of occ.	yes				
Colorado	3,980	any time				afford hsg**	no
Florida	1,035	bldg. permit				sch,/aff.hsg.	
Georgia	3,757	bldg. permit	yes		180 days	econ devt	yes
Hawaii	2,017	bldg. permit	yes				
Idaho	7,124	bldg. permit				afford hsg**	yes
Illinois	5,670	bldg per/CO					
Indiana	9,705	bldg. permit			3 years	afford hsg	yes
Maine	465	any time	yes	yes			
Maryland	49	any time					
Montana	1,809	bldg. permit	yes				
Nevada	4,685	bldg. permit		yes		schools	no
New Hampshire	2,356	cert. of occ.	yes				
New Jersey	8,670	bldg. permit					
New Mexico	6,575	bldg. permit	yes	yes	4 years	afford hsg	unclear
Oklahoma	2,537	bldg. permit	yes			multiple	yes
Oregon	4,111	any time	yes				
Pennsylvania	6,115	bldg. permit		yes		afford/other	no
Rhode Island	1,942	cert. of occ.	yes			general	no
South Carolina	4,624	bldg. permit				afford hsg	yes
Texas	8,641	bldg. permit	yes		forever	afford hsg	no
Utah	5,553	any time	yes			afford hsg	yes
Vermont	1,229	any time	yes	yes		general	no
Virginia	1,893	bldg. permit		yes			
Washington	2,064	any time	yes			general	yes
West Virginia	3,105	any time	yes			general	yes
Wisconsin	1,167	bldg. permit				afford hsg	no

* public schools are exempt from all impact fees except for streets and utilities

** "taxing entities" also excluded unless adopting ordinance expressly provides otherwise

Several states, following Texas' early lead, have imposed a recalculation requirement. This provision mandates that the local government recalculate the impact fees after completion of the capital improvements plan, then refund any excess collected if actual costs were less than projected costs. This provision from the original Texas act was copied almost verbatim in several other acts. Texas has since repealed the provision. The provision is seldom applicable, since impact fees are usually updated before the completion of the entire capital plan. However, Arizona's new statute for cities requires refunds if the actual cost of an individual construction project is more than 10% below the estimated cost.

Another type of provision pioneered by the Texas act stipulates that fees are assessed at platting and locked in for a period of time. In the Texas act, the fee schedule in effect at time of final subdivision approval is the maximum fee that may be charged to development within the subdivision, regardless of when building construction actually occurs. Another four states lock in the fee schedule in effect at time of platting for a fixed period of time.

While about half of the acts are silent on the issue of waivers or exemptions, the other half explicitly authorize local governments to waive impact fees for certain types of projects. Most of them limit waivers to

affordable housing or, to a lesser extent, economic development projects. Of the acts that authorize waivers, about half require that the local government reimburse the impact fee fund from some other, non-impact fee revenue source.

Procedural Requirements

In addition to substantive provisions, many impact fee enabling acts set forth procedural requirements for impact fee adoption and updating. Some of these procedural provisions are summarized in Table 6. Ten states require that an advisory committee be appointed to oversee the development of the impact fee system, although Arizona cities have the option of conducting a certified biennial audit. The committee generally must have significant representation from the development community, most commonly 40 percent.

State acts generally require that impact fees be adopted by ordinance at a duly noticed public hearing. Many of the acts even specify the minimum time period that notice must be published before the public hearing is held. Six state acts specify the time period that must elapse between the adoption of an impact fee ordinance and the imposition of the new or increased impact fee (see "fee phase-in" column in Table 6).

A majority of state acts require that impact fee revenues be spent within a specified number of years or be refunded to the fee payer. These requirements range from five to 15 years, with six years being the most common. In states with refund requirements, local governments must keep records on fee payments to be able to track the payment and expenditure of fees on a "first-in, first-out" basis. In practice, however, refunds due to the failure to spend the money within the required time period are rare.

Most acts are silent on how frequently the fees must be updated. Of the less than one-third that require periodic updates, every five years is the most common requirement. Four states, Arizona, California (school impact fees only), Nevada (road impact fees only) and Oregon, have guidelines for indexing fees for inflation between periodic updates.

Several state acts authorize the use of a portion of impact fees collected to defray the cost of administering the impact fee system. Some set limits on the percentage of impact fees that can be used for this purpose, while others require that administrative fees be limited to actual administrative costs. Some limit the use of such fees to paying for the costs of preparing the impact fee study or capital improvements plan.

Table 6: STATE ENABLING ACT PROCEDURAL PROVISIONS

State	Advisory Comm. Size	Advisory Comm. Dev. Rep.	Hearing Notice	Fee Phase-in	Spending Limit	Update Frequency	Admin. Fee
Arizona (cities)	5+ (1)	50%	60 days	75 days	10 yrs (2)	5 years	
Arizona (counties)			120 days	90 days			
Arkansas					7 years		
California			30 days	60 days	5 years		3% (3)
Colorado							
Florida				90 days			actual cost
Georgia	5-10	50%			6 years		3%
Hawaii			15 days		6 years		
Idaho	5+	2+	2 wks		8 yrs (4)	5 years	study cost
Illinois	10-20	40%	30 days		5 years	5 years	
Indiana	5-10	40%			6 years	5 years	5%
Maine							
Maryland							
Montana	n/a	1					
Nevada	5+	n/a	20 days		10 years	3 years	study cost
New Hampshire					6 years		
New Jersey							
New Mexico	5+	40%	zoning		7 years	5 years	3%
Oklahoma	planning comm.		15 days		annual report		
Oregon			90				study cost
Pennsylvania	7-15	40%	2 wks				
Rhode Island					8 years		
South Carolina			30 days		3 yrs (5)	5 yrs (6)	
Texas	5+	40%	30 days		10 years	5 years	study cost
Utah			2 wks	90 days	6 years		
Vermont					6 years		
Virginia	5-10	40%			15 years	2 years	
Washington					6 years		
West Virginia				60 days	6 years		
Wisconsin			1 week		7 years		

Notes: (1) optional, can choose biennial audit; (2) 15 years for water/wastewater; (3) school impact fee only; (4) 11 years if finding made of reasonable cause; (5) "An impact fee must be refunded …if: (1) the impact fees have not been expended within three years of the date they were scheduled to be expended"; (6) "review" every 5 years, "update" every 10 years.

Recent Developments

June 2021 – FL. The legislature passed House Bill 337, which was signed by the governor and became effective on June 4, 2021. The major change in the 2021 amendments relates to restrictions on how much impact fees may be increased. Any impact fee increase of less than 25% must be phased in over two years, and any increase between 25-50% over four years. No fee can go up more than 50% over four years. Aside from annual phasing of increases, fees can only be increased once every four years (this provision would appear to rule out annual increases to account for cost inflation). Another change was to require that eligible capital facilities have a minimum life expectancy of five years (although public safety vehicles appear not to be subject to this restriction). HB 377 also referenced a definition of public facilities in 163.3164(39) – "major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational facilities" – and adds "emergency medical, fire, and law enforcement facilities." This list leaves out support facilities that many jurisdictions charge for under the rubric of "general government" or "public building" fees, as well as rarer types of fees such as those for hurricane mitigation. Because the referenced definition does not expressly limit facilities to those listed, it does not appear to ban impact fees from covering non-listed facilities.

July 2020 – FL. The legislature passed two bills, HB 1339 and SB 1066, which both became effective on July 1, 2020. The major change was to make developer credits transferrable within the same impact fee benefit district.

June 2019 – FL. HB 7103, which became effective on June 28, 2019, made a number of amendments to the impact fee statute, including (1) developer contributions must be credited at full market value, (2) the value of developer credits must be increased by the same percentage by which impact fees are increased, and (3) impact fee waivers for affordable housing do not have to be offset with other revenue.

June 2018 – NC. HB 406 was passed by the Senate on June 18, 2018 repealing Orange County's impact fee authority. Because it was a private act it was not subject to the governor's approval or veto, and went into effect immediately. The action was in response to a large recent increase in school impact fees, which resulted in complaints from builders and developers.

July 2017 – NC. HB 436. Signed by the governor on July 20, 2017, this bill imposed uniform requirements for water and sewer system development fees. Any existing system development fee, regardless of what it is called, must be conformed to comply with the new requirements by July 1, 2018. Requirements include a written analysis that employs a generally acceptable methodology, covers a planning horizon of at least 10 but no more than 20 years, fully documents the fee calculations, and identifies all assumptions and data limitations and demonstrates they do not materially affect the fee calculation. Unless a "buy-in" methodology (undefined term) is used, a revenue credit must be calculated to account for future revenues to be generated by new development and the fee must be reduced by that amount, provided that it may not be less than 25 percent. Buy-in fees are also allowed to be spent for previously-constructed improvements with excess capacity (presumably these costs are remaining debt for excess capacity, but this is also an allowed expenditure for fees calculated using other methodologies), or for "capital rehabilitation projects" (presumably in cases where debt for excess capacity has already been paid, and the fees are being collected to recoup past expenditures). Fees must be updated at least every 5 years, and the authority to impose system development fees is to be narrowly construed to ensure that the fees do not unduly burden new development.

July 2016 – UT. HB 3002. Signed by the governor on July 17, this minor amendment prohibits local governments from imposing impact fees on the state fair park.

June 2016 – CO. HB 16-1088. Signed by the governor on June 8, this minor amendment provides authority to local government to impose impact fees on behalf of fire protection districts.

June 2016 – SC. HB 4416. Signed by governor and effective on June 3, this amendment authorizes school impact fees, and exempts public schools and volunteer fire departments from being assessed impact fees.

July 2015 – WA. SB 5923 requires counties, cities, and towns to adopt a deferral system for the collection of impact fees for new single-family detached and attached residential construction, a change that developers contended would address the financial burden of paying fees at the early stages of the process, before a development project is generating any revenues. The deadline for most of the new law's provisions is September 1, 2016.

May 2013 – WA. HB 1652 would have required local governments to defer collection of impact fees from residential building permit to the earlier of closing or 180 days after building permit issuance. Local governments would also have the option to defer to certificate of occupancy. The bill was vetoed by the governor on May 21, citing concern about delaying revenue to schools.

March 2012 – WA. HB 1398, passed by the legislature on March 8, 2012, added a requirement that recipients of low-cost housing exemptions to record a covenant that prohibits the use of the property for any other purpose, and that if the use changes, the impact fees waived must be paid.

November 2011 – OK. A new municipal development fee act was adopted by the legislature and became effective on November 1, 2011.

April 2011 - AZ. The third major amendment to the state act in as many years, SB 1525, signed by the governor on April 26, 2011, constitutes a major overhaul of the enabling act for municipalities. Major changes include listing, for the first time, facilities eligible for impact fees, banning automatic inflation indexing, requiring that fees be based on the existing level of service, mandating credit for the portion of any construction sales tax that exceeds the sales tax rate on other goods or services, and requiring that fees be updated at least every five years. No longer authorized are fees for general government facilities, solid waste facilities, library buildings larger than 10,000 square feet and library books or equipment, fire and police administrative and training buildings and aircraft, parks larger than 30 acres and community centers larger than 3,000 square feet. Municipalities may continue to collect fees for unauthorized facilities after January 1, 2012 only if the fees were pledged to retire debt. All municipalities must come into full compliance by August 1, 2014 in order to continue collecting impact fees. The moratorium on new or increased impact fees, which had been set to expire on June 30, 2012, was amended to expire on December 31, 2011. At the same time, a 3-year moratorium was placed on any increase of construction sales tax rates beyond those charged to other services.

April 2011 - WA. HB 1295, passed by the legislature on April 15, 2011, requires that new single-family homes that include a fire sprinkler system must be exempted from fire impact fees.

March 2011 – UT. SB 146, signed by the Governor on March 16, 2011 and effective May 10, 2011, reorganized the impact fee enabling act. Only a few substantive changes were made. Water and sewer districts are now clearly subject to the act. A written certification by the person or firm that prepared the impact fee facilities plan that it complies with the act is now required (previously, on the preparer of the written impact fee analysis had to make such a certification). Only the actual costs of excess capacity (not current replacement costs) can now be recovered through impact fees. Public notice requirements were simplified (separate notices to the home builders association and other stakeholders are no long required).

March 2011 – WV. HB 3185, which was passed March 12, 1011 and went into effect 60 days later, requires counties charging impact fees (currently limited to Jefferson County) to discount residential fees in order to encourage affordable housing. The bill requires that the discount be based on the value of the new unit compared to a state index of average home values.

July 2010 - HI. Act 188, effective on July 1, 2010, made numerous "clean-up" revisions to school impact fee legislation. The changes were proposed by the Hawaii Department of Education.

April 2010 - AZ. House Bill 2478, signed by the Governor on April 26, 2010, extended the two-year moratorium on any new or increased impact fees passed in 2009 for another year, until June 30, 2012.

March 2010 - WA. House Bill 1080, which became effective on June 10, 2010, deleted the restriction that jurisdictions within fire districts could not impose fire impact fees.

March 2010 - UT. House Bill 205, signed by the governor on March 29, 2010, made minor changes relating to school districts and charter schools.

September 2009 - AZ. House Bill 2008, signed by the governor on September 5, 2009, made several changes to the state's impact fee enabling act for municipalities and imposed a two-year freeze on new or increased municipal impact fees. The major change to the municipal enabling act was to lock in the fee schedule in place at the time of subdivision or site plan approval for two years. The changes to the enabling act are effective on December 31, 2009. The freeze on new or increased fees was effective retroactively on June 30, 2009 and extended until June 30, 2011.

July 2009 - FL. House Bill 277, effective July 1, 2009, added a provision putting the burden of proof in any impact fee challenge on the local government to show, by a preponderance of the evidence, that the impact fee meets requirements of state case law and the Florida impact fee act, and prohibits state courts from using a "deferential standard." Senate Bill 360, effective June 1, 2009, exempts the elimination, suspension or decrease of an impact fee from the 90-day notification period.

February 2009 - SC. Senate Bill 235, effective February 26, 2009, authorized the Dorchester County School District No. 2 to impose school impact fees. The School District imposed a fee in June 2009, and builders filed suit in September 2009, claiming the bill violated state constitutional provisions limiting special legislation and requiring state-wide uniformity.

September 2008 - CA. Assembly Bill 3005, effective September 30, 2008, added section 66005.1 to the Government Code. This new section requires local governments to take into consideration the lower trip generation characteristics of transit-oriented development in assessing road impact fees, unless the local government makes a specific finding that such developments do not have lower trip generation characteristics.

August 2008 - CA. Assembly Bill 2604, effective August 1, 2008, amended section 66007 of the Government Code to authorize local governments to defer the collection of impact fees, other than school impact fee, up to the close of escrow. It also exempts affordable housing projects from being required to pay impact fees prior to certificate of occupancy.

July 2008 - FL. The Florida legislature made a one-time $22.5 million appropriation for down payment assistance for affordable housing that is directly linked to a 25-percent reduction in impact fees. If counties and municipalities wish to obtain down payment assistance dollars for their affordable housing programs, they must reduce their impact fees by the required 25 percent. Under specific language within the 2009 budget approved during the 2008 Legislative Session, the 25 percent impact fee reduction must be for a period not less than 18 months and have occurred not more than 12 months prior to the adoption of the state's 2009 budget in order to be eligible for the funding. Local governments that impose no impact fees or waive impact fees entirely for affordable housing purposes may also qualify.

May 2008 - UT. HB 153, which was signed by the governor on March 14, 2008, made a number of relatively minor amendments to Utah's impact fee enabling act. The major substantive change was to require a 90-day waiting period before an impact fee enactment can take effect. The major procedural change was to require notification, including written notice to the state homebuilder, realtor and contractor associations, before preparing or contracting to prepare an impact fee study.

April 2008 - ID. House Bill 656, signed by the Governor on April 9, 2008, amended 67-8203 to exempt taxing districts from payment of impact fees, unless they are expressly required to pay such fees in the impact fee ordinance.

September 2007 - OR. The Oregon legislature gave school districts the ability to impose a tax on construction of new buildings of up to $1.00 per square foot for residential development and up to $0.50 per square foot for nonresidential development, provided that the fee per building permit or building does not exceed $25,000. At the same time, SB 1036, which became effective on September 27, 2007, takes away the ability of local governments to impose new or increased construction taxes for other purposes.

September 2007 - AZ. Arizona modified its municipal impact fees statute somewhat, requiring broadly-defined "infrastructure financing plans," allowing automatic indexing of fees if identified in the impact fee study, putting a two-year limitation on cities' ability to collect fees and modifying notice and phase-in requirements. Senate Bill 1423 was signed by the governor on April 24, 2007 and became effective on September 19, 2007.

July 2007 - HI. Hawaii passed Act 245, effective on July 27, 2007, which established a framework for the Department of Education to designate "school impact districts" where new residential construction would be subject to the payment of school impact fees, and to calculate fees for such areas. Prior to receiving this authority, the Department of Education would ask the counties and State Land Use Commission to condition land use and zoning approvals on a requirement that developers negotiate with the Department for appropriate land dedications or fee payments.

July 2007 - ID. House Bill 2004, effective July 1, 2007, amended 67-8204A to allow local governments to enter into intergovernmental agreements with fire districts, water districts, sewer districts, recreational water and sewer districts and irrigation districts for the development of joint capital plans and/or the collection or expenditure of impact fee funds.

July 2007 - NV. With Assembly Bill 253, effective on July 1, 2007, Nevada prohibited the use of a single jurisdiction-wide service area, except for cities with less than 10,000 residents or counties with less than 15,000 residents. While the intent of the legislation is to ensure that fees collected are spent on improvements within the same subarea of the jurisdiction, it is unclear how local governments will be able to comply with this requirement when charging impact fees for centralized facilities, such as a needed expansion to a locality's only water treatment plant or police station.

July 2007 - GA. The Georgia legislature targeted special requirements at the City of Atlanta (the only municipality with more than 140,000 parcels of land) in response to the City's past expenditure of road impact fees to install sidewalks in neighborhoods far from where most of the growth was occurring. HB 232, which became effective on July 1, 2007, requires the City to justify the expenditure of road impact fees on the basis of (1) proximity to where fees have been collected and (2) the greatest effect on improving the level of service.

May 2007 - TX. The Texas legislature exempted public schools from the payment of impact fees. Senate Bill 883 became effective on May 25, 2007.

April 2007 - VA. A number of changes were made to Virginia impact fee law with Chapter 896 of the Acts of the 2007 Assembly, which was effective on April 11, 2007. One change was to broaden the number of local governments that could enact road impact fees to any locality that has adopted zoning and has (1) a population of at least 20,000 and a growth rate of at least 5 percent or (2) has a population growth of 15% or more from the latest to the next-to-latest decennial census year. The time of collection was changed from certificate of occupancy to building permit. The time period covered by the transportation plan was extended from ten to twenty years (or build-out). Instead of being unable to impose impact fees on developments from which the locality has accepted proffers, localities must now credit the value of proffers against the fees. Finally, a new impact fee article (Article 9) was created that allows urban counties that have established an urban transportation service district to enact impact fees for a broad array of public facilities, including roads, drainage, parks, public safety, school and libraries. However, these Article 9 impact fees may be imposed only outside urban transportation service districts, and only on agriculturally-zoned parcels that are being subdivided for by-right residential development. Authority for Article 9 impact fees expires on December 31, 2008.

March 2007 - AR. Senate Bill 298, effective on March 19, 2007, clarified that utility hookup fees and access fees, which had previously been excluded from the definition of impact fees, are included in the definition unless they are designed solely to pay for the cost of connection or to recover costs for the line being connected to. The bill applied retroactively, and required that any water or wastewater utility connection fee collected on or after the effective date of the impact fee statute (July 15, 2006) that meets the definition of an impact fee and was not used to pay for the physical connection or to recover costs for the line connected to be refunded.

August 2006 - CA. Assembly Bill 2751, effective on August 28, 2006, added section 66001(g) to the Government Code to clarify that impact fees may not "include the costs attributable to existing deficiencies."

July 2006 - ID. House Bill 780, effective July 1, 2006, amends section 67-8206 to extend the time within which impact fees must be spent from 5 to 8 years, and from 8 to 11 years in the event a finding is made showing cause why it is reasonable to hold the fees longer (jurisdictions continue to be able to hold wastewater and drainage fees for up to 20 years). The bill also amended section 67-8210 to streamline the adoption requirements, reducing notice requirements from two to one and allowing the capital improvements plan and impact fee ordinance to be adopted at the same public hearing.

July 2006 - HI. With Senate Bill 2901, which was effective on July 1, 2006, Hawaii's legislature removed the restriction that previously allowed only counties with a population of greater than 500,000 to impose impact fees for State highways.

June 2006 - FL. Florida can now be said to have an impact fee act, although local governments in Florida have long had their authority to impose impact fees confirmed by the courts. The "Florida Impact Fee Act," which became effective on June 14, 2006, imposes several minor requirements on local governments adopting or amending impact fee ordinances. The fees must be based on the most "recent and localized" data, administrative charges may not exceed actual administrative costs, and notice must be provided at least 90 days prior to the effective date of an impact fee ordinance. Local governments, however, remain concerned that a future legislature will impose more onerous restrictions.

June 2006 - TN. Although Tennessee does not have a general enabling act, 13 counties and 15 cities have enacted impact fees or adequate facilities taxes, based either on home-rule authority or special local acts. Near the end of the 2006 legislative session, the Tennessee General Assembly passed the "County Powers Relief Act," which was signed by the Governor on June 20, 2006. It authorizes growth counties, as defined under the act, to enact a "county school facilities tax" of up to $1 per square foot on residential development. However, this new authority comes with some significant restrictions: (1) it prohibits any new private acts for facilities taxes, and (2) counties may not impose a school facilities tax unless they repeal any other impact fee or facilities tax. Earlier, the legislature passed a bill effective July 1, 2005 requiring "a statement disclosing the amount of any impact fees or adequate facilities taxes paid to any city or county" to be given to the purchaser at the first sale of residential properties.

June 2006 - WI. The Wisconsin legislature made some major retrenchments to the authority granted by that State's enabling act. Act 477, which became effective on June 13, 2006, prohibits counties from imposing impact fees (four counties had been assessing park impact fees), prohibits fees for recreational facilities other than parks and athletic fields, and prohibits impact fees for vehicles. It also prohibits impact fees from being collected prior to building permit issuance. Act 203, which became effective on April 10, 2006, requires fees to be refunded if not spent in seven years.

May 2006 - UT. Utah made modest revisions to its enabling act with SB 267, which became effective on May 1, 2006. The most significant change was to create a narrow exception to the ban on impact fees for public safety vehicles, allowing fees for "a fire suppression vehicle with a ladder reach of at least 75 feet, costing in excess of $1,250,000, that is necessary for fire suppression in commercial areas with one or more buildings at least five stories high." Such a fee, however, can only be assessed on properties with commercial zoning.

April 2005 - MT. Montana adopted an impact fee enabling act in 2005. Senate Bill 185 was passed by the legislature on April 9, 2005 and was signed by the Governor on April 19, 2005. It is relatively brief and has few restrictive provisions. It does, however, require a two-thirds vote of a municipal governing body or a unanimous vote of a county commission to adopt impact fees for facilities other than water, wastewater, transportation, drainage, fire or police facilities. Nevertheless, the act would appear to allow impact fees for schools, parks, libraries and general government facilities with a super-majority vote of the governing body.

April 2003 - AR. Arkansas adopted an impact fee enabling act in 2003. Senate Bill 620 was passed by legislature on April 16, 2003 and was signed by the Governor as Act 1719 on April 22, 2003. The act only applies to municipalities and water or wastewater providers; it does not authorize impact fees for counties. It

clarified the authority of cities to enact impact fees, which had not been firmly established before this. Like most state acts, it does not allow school impact fees. It is relatively short and has few requirements. Its only unusual feature is that it requires that the amount of the impact fee paid be itemized separately on the closing statements when property is sold. The original version of the bill, drafted at the behest of the state homebuilders association, had proposed that the fees for single-family homes actually be paid at time of closing by the buyer, but this requirement was dropped in conference committee.

July 2002 - ID. State legislatures are becoming increasingly involved in regulating how local governments develop and impose impact fees. Because of the complexity of impact fee principles and practice, and the lack of understanding of the field by legislators, there is a real danger that attempts to impose more specific requirements may have negative unintended consequences. For example, the Idaho legislature amended that state's impact fee enabling act in 2002 in a way that was intended to favor Micron in its dispute with the Ada County Highway District. Micron had filed an independent assessment with the highway district for an expansion to its existing manufacturing facilities in Boise in which it claimed that it should get credit for all district property taxes that it had paid in the past or the future that were available for capital improvements. The amendments to the act, which became effective July 1, 2002, require local governments to calculate revenue credits in such a way that an existing business that expands its operations or builds a new facility gets credit for past and future tax payments by the business within the same service area, even though the gross fee before credits is based only on the net increase in traffic generated by the expansion or new construction. If interpreted as the act appears to intend, an existing business that expands or opens a new branch within the same service area would likely never pay a road impact fee, while a business that does not have existing operations within a service area would be required to pay. Such an inequitable outcome would be subject to challenge as contrary to the enabling act's more general "proportionate share" language. As a result, the amendments to the state act cast a cloud of uncertainty over how revenue credits should be calculated in Idaho.

November 2001 - CO. Colorado adopted an impact fee enabling act in 2001. Senate Bill 15 was signed by the governor on November 16, 2001. Among other things, this bill created a new Section 104.5: Impact Fees, in Article 20 of Title 29, Colorado Revised Statutes, which specifically provides that: "Pursuant to the authority granted in section 29-20-104 (1) (g) and as a condition of issuance of a development permit, a local government may impose an impact fee or other similar development charge to fund expenditures by such local government on capital facilities needed to serve new development." Home-rule cities in Colorado had long assessed impact fees, but the authority of counties and towns to assess impact fees was less clear. While clarifying the authority issue, the enabling act has created some confusion about whether local governments can assess impact fees at time of building permit, or whether they must assess them at some earlier stage in the development process.

September 2001 - TX. The Texas legislature amended that state's impact fee enabling act, effective September 1, 2001. Credits against the impact fees for other taxes or fees that would be paid by new development and used for capital improvements of the same facility type as the impact fee are now required. As an alternative to performing a revenue credit calculation, cities can simply reduce the impact fees by 50 percent. The maximum width of road impact fee service areas was increased from three to six miles, and the amount of time between mandatory updates was increased from three to five years. The recalculation requirement described above was eliminated. Finally, the number of public hearings required before impact fees could be updated was reduced from two to one (two are still required for initial adoption).

July 2001 - NV. The Nevada legislature passed Assembly Bill 458, which became effective July 1, 2001. The bill added traffic signals, parks, police stations and fire stations to the list of facilities that could be funded with impact fees.

April 2001 - NM. In New Mexico, House Bill 334, which was signed by the governor and became law on April 3, 2001, specifically authorized impact fee waivers for affordable housing projects.

To the Future

From 1987 to 1993, there was a flurry of legislative activity as 21 states adopted impact fee enabling acts. This was an average of three new acts each year. Since then, eight additional states have adopted enabling legislation (seven if we don't count Florida's act, which was not so much an enabling act as a set of restrictions on established impact fee authority). There have been no new enabling acts since Oklahoma's in 2011.

A major factor in the initial surge of impact fee acts was the support of builder groups, who wanted impact fees that were being imposed by local governments under their police powers to be regulated. Now that virtually all states with significant growth and impact fee activity have enabling acts, one might expect builders' and legislators' attention to shift to fine-tuning existing legislation.

To-date, there have not been many significant amendments to existing enabling acts. The only state to expand the list of eligible facilities was Nevada, which added authority to impose impact fees for traffic signals, parks and police and fire stations in 2001 (Utah's addition of ladder trucks in 2006 is so narrow that it hardly counts). In 2007, Hawaii gave the state School Board the authority to designate school impact districts where school impact fees and dedication requirements apply. Wisconsin became the first state to withdraw authority to impose impact fees, when it repealed the authority of counties to impose fees and prohibited fees for major park improvements and public safety vehicles in 2006. North Carolina imposed uniform state-wide requirements on water and sewer system development fees in 2017 (such fees were already specifically authorized by statute, but authority to impose other types of impact fees require a private act).

While it is difficult to generalize, there does seem to have been a hardening of resistance among development interests and legislators to granting additional impact fee authority or even allowing existing authority to continue to be available. This may be due, in part, to the increasing level of impact fees being charged, as well as the depressed state of the development industry prior to the last few years. Evidence of this resistance is mounting. The retrenchment of impact fee authority in Wisconsin (2006) and Arizona (2011) are prime examples. Legislation in New Mexico that attempted to retroactively prohibit Albuquerque's "growth tier" impact fee system was narrowly defeated in 2005. The relatively benign Florida act was enacted only after a very restrictive version narrowly failed, and local governments in that state are now conducting annual battles with legislators to preserve their relatively unfettered impact fee authority. Court decisions favorable to development interests in Mississippi and North Carolina in 2006 undermined home rule authority for impact fees in those states. Efforts in the Florida legislature in 2009 to freeze impact fees for three years were narrowly defeated, while similar efforts in 2009 to freeze impact fees for two years succeeded in Arizona (in 2010 this was extended for another year). In sum, future legislative battles seem likely to revolve around preserving, rather than expanding, impact fee authority, at least in the near term.

Text of Acts

The text of the impact fee enabling acts for the 28 states that have adopted such acts are attached for reference and comparison purposes (Tennessee home rule powers for mayor-aldermanic cities is also included). The acts were downloaded from the internet on the dates specified. The author does not guarantee their accuracy.

Alabama – Local Act for Baldwin County

[downloaded on June 21, 2022]

Title 45: Local Laws
Chapter 2: Baldwin County
Article 24: Taxation
Part 4: Tax, General
Division 4: Impact Fees

Section 45-2-243.80
Applicability.
This subpart shall apply only in Baldwin County.

(Act 2006-300, p. 622, §1.)

Section 45-2-243.81
Definitions.
For the purposes of this subpart, the following words have the following meanings:

(1) GOVERNMENTAL INFRASTRUCTURE. Any facilities, systems, or services that are owned and operated by or on behalf of a political subdivision for any of the following purposes:

a. Storm water, drainage, and flood control.

b. Roads and bridges.

c. Capital expenditures related to law enforcement and public safety, fire protection, emergency medical services, public park and recreational facilities, and public schools.

d. Maintenance and upkeep of facilities or resurfacing of roadways where needed because of the impact of new development.

(2) IMPACT FEE. A charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of governmental infrastructure necessitated by and attributable directly to the new development. The term includes the dedication of land for public parks or payments made in lieu of the dedication to serve park needs and includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, and any other similar fee that functions as described by this definition. The term does not include any of the following:

a. Dedication of rights-of-way or easements or construction or dedication of on-site or off-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks, or curbs if the dedication or construction is required or necessitated by and attributable to the new development.

b. Lot or acreage fees to be placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or sewer mains or lines.

c. Other pro rata fees for reimbursement of water or sewer mains or lines extended by the political subdivision.

(3) NEW DEVELOPMENT. The subdivision of land; the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or any use or extension of the use of land; any of which increases the demands on governmental infrastructure.

(4) POLITICAL SUBDIVISION. A municipality or the county.

(5) ROADS AND BRIDGES. Any public highway, road, or bridge in the political subdivision, together with all necessary appurtenances. The term includes the political subdivision's share of costs for roadways and associated improvements designated on the federal or state highway system, including local matching funds and costs related to utility line relocation and the establishment of curbs, gutters, sidewalks, drainage appurtenances, and rights-of-way.

(Act 2006-300, p. 622, §2; Act 2008-486, p. 1064, §1.)

Section 45-2-243.82
Limitations on impact fees; governmental infrastructure outside corporate limits of municipality.
(a) Unless otherwise specifically authorized by state law or this subpart, the Baldwin County Commission or a municipality in the county may not enact or impose an impact fee.

(b) Municipalities may enact or impose impact fees only on land within their corporate limits by complying with this subpart. The Baldwin County Commission may enact or impose impact fees only on land outside of the corporate limits of a municipality by complying with this subpart.

(c) A municipality may contract with the Baldwin County Commission to provide governmental infrastructure, except roadway facilities, to an area outside its corporate limits.

(Act 2006-300, p. 622, §3.)

Section 45-2-243.83
Impact fees for governmental infrastructure.
An impact fee may be imposed only for governmental infrastructure and costs directly related thereto.

(Act 2006-300, p. 622, §4.)

Section 45-2-243.84
Setting impact fees; levy; credits; sharing of revenues.
(a) (1) An impact fee per service unit of new development may be set by the political subdivision not to exceed one percent of the estimated fair and reasonable market value of the new development after completion.

(2) The estimated fair and reasonable market value of a new development for the purpose of setting an impact fee pursuant to subdivision (1) shall be based on the amount set forth for the issuance of the building permit plus the value of the land or an estimated fair and reasonable market value based on information submitted by the developer. If the political subdivision does not agree with the estimated fair and reasonable market value submitted by the developer, the political subdivision may obtain an appraisal by a licensed appraiser. If the value of the development as submitted by the developer and the value as set forth in the appraisal obtained by the political subdivision are within 10 percent of each other, the two values shall be averaged to determine the estimated fair and reasonable market value of the development. If the two values are not within 10 percent of each other, the developer and the political subdivision shall together select a licensed appraiser to submit an appraisal that would be binding on both parties.

(b) An impact fee may be levied only once on a service unit.

(c) A political subdivision, by ordinance, may provide for credits against any impact fees for expenditures for governmental infrastructure by the developer of a new development and may provide credits based on the demonstrated public benefit of the development. The political subdivision may provide the procedure for the approval of any credit against any impact fees on the development as provided in this subsection.

(d) A county may elect to share revenues from the collection of impact fees with a municipality when the revenues are generated in the police jurisdiction of the municipality. Any revenues shared pursuant to this subsection shall be used by the municipality in accordance with this subpart.

(Act 2006-300, p. 622, §5; Act 2008-486, p. 1064, §1.)

Section 45-2-243.85
Collection and payment of impact fees.
A political subdivision may collect impact fees at either the time of the transfer of a lot or service unit, at the time of connection to the political subdivision's water or sewer system, or at the time the political subdivision issues either the building permit or the certificate of occupancy. Any impact fees assessed pursuant to this subpart shall be paid by the developer and shall be a lien on the property.

(Act 2006-300, p. 622, §6.)

Section 45-2-243.86
Hearing.
Prior to the adoption of an impact fee for the political subdivision, the political subdivision shall hold a public hearing on the governmental infrastructure needs as a result of new development. Notice of the public hearing shall be published at least once in a newspaper of general circulation in the political subdivision not less than two weeks prior to the public hearing. Action or the resolution or ordinance setting the impact fee in the political subdivision may be taken at a regularly scheduled meeting of the governing body of the political subdivision not less than two weeks after the public hearing. The political subdivision shall make a specific finding that the impact fee will benefit the new development.

(Act 2006-300, p. 622, §7.)

Section 45-2-243.87
Disposition of funds.
Any impact fees collected within a political subdivision shall be used only for governmental infrastructure purposes. Any impact fees collected pursuant to this subpart shall be expended or contracted to be expended within five years of the collection of the fees unless the development or the expenditure or contracting for expenditure of the fees is delayed by an Act of God or litigation. Any impact fee not expended or contracted for within five years unless subject to an exception as provided above shall be refunded to the developer.

(Act 2006-300, p. 622, §8; Act 2008-486, p. 1064, §1.)

Arizona Impact Fee Acts

[SB 1525, signed by the Governor on April 26, 2011, rewrote the Arizona impact fee enabling act for municipalities. It is reproduced below.]

Senate Bill 1525, House Engrossed Senate Bill
State of Arizona Senate, Fiftieth Legislature, First Regular Session, 2011

[definitions in T renumbered in alphabetical order in codified version downloaded 12/15/2022]

Be it enacted by the legislature of the state of Arizona:

Section 1. Section 9-463.05, Arizona revised statutes, is amended to read:

9-463.05. Development fees; imposition by cities and towns; infrastructure improvements plan; annual report; advisory committee; limitation on actions; definitions

A. A municipality may assess development fees to offset costs to the municipality associated with providing necessary public services to a development, including the costs of infrastructure, improvements, real property, engineering and architectural services, financing and professional services required for the preparation or revision of a development fee pursuant to this section, including the relevant portion of the infrastructure improvements plan.

B. Development fees assessed by a municipality under this section are subject to the following requirements:

1. Development fees shall result in a beneficial use to the development.

2. The municipality shall calculate the development fee based on the infrastructure improvements plan adopted pursuant to this section.

3. The development fee shall not exceed a proportionate share of the cost of necessary public services, based on service units, needed to provide necessary public services to the development.

4. Costs for necessary public services made necessary by new development shall be based on the same level of service provided to existing development in the service area.

5. Development fees may not be used for any of the following:

(a) Construction, acquisition or expansion of public facilities or assets other than necessary public services or facility expansions identified in the infrastructure improvements plan.

(b) Repair, operation or maintenance of existing or new necessary public services or facility expansions.

(c) Upgrading, updating, expanding, correcting or replacing existing necessary public services to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards.

(d) Upgrading, updating, expanding, correcting or replacing existing necessary public services to provide a higher level of service to existing development.

(e) Administrative, maintenance or operating costs of the municipality.

6. Any development for which a development fee has been paid is entitled to the use and benefit of the services for which the fee was imposed and is entitled to receive immediate service from any existing facility with available capacity to serve the new service units if the available capacity has not been reserved or pledged in connection with the construction or financing of the facility.

7. Development fees may be collected if any of the following occurs:

(a) The collection is made to pay for a necessary public service or facility expansion that is identified in the infrastructure improvements plan and the municipality plans to complete construction and to have the service available within the time period established in the infrastructure improvement plan, but in no event longer than the time period provided in subsection H, paragraph 3 of this section.

(b) The municipality reserves in the infrastructure improvements plan adopted pursuant to this section or otherwise agrees to reserve capacity to serve future development.

(c) The municipality requires or agrees to allow the owner of a development to construct or finance the necessary public service or facility expansion and any of the following apply:

(i) The costs incurred or money advanced are credited against or reimbursed from the development fees otherwise due from a development.

(ii) The municipality reimburses the owner for those costs from the development fees paid from all developments that will use those necessary public services or facility expansions.

(iii) For those costs incurred the municipality allows the owner to assign the credits or reimbursement rights from the development fees otherwise due from a development to other developments for the same category of necessary public services in the same service area.

8. Projected interest charges and other finance costs may be included in determining the amount of development fees only if the monies are used for the payment of principal and interest on the portion of the bonds, notes or other obligations issued to finance construction of necessary public services or facility expansions identified in the infrastructure improvements plan.

9. Monies received from development fees assessed pursuant to this section shall be placed in a separate fund and accounted for separately and may only be used for the purposes authorized by this section. Monies received from a development fee identified in an infrastructure improvements plan adopted or updated pursuant to subsection D of this section shall be used to provide the same category of necessary public services or facility expansions for which the development fee was assessed and for the benefit of the same service area, as defined in the infrastructure improvements plan, in which the development fee was assessed. Interest earned on monies in the separate fund shall be credited to the fund.

10. The schedule for payment of fees shall be provided by the municipality. Based on the cost identified in the infrastructure improvements plan, the municipality shall provide a credit toward the payment of a development fee for the required or agreed to dedication of public sites, improvements and other necessary public services or facility expansions included in the infrastructure improvements plan and for which a development fee is assessed, to the extent the public sites, improvements and necessary public services or facility expansions are provided by the developer. The developer of

residential dwelling units shall be required to pay development fees when construction permits for the dwelling units are issued, or at a later time if specified in a development agreement pursuant to section 9-500.05. If a development agreement provides for fees to be paid at a time later than the issuance of construction permits, the deferred fees shall be paid no later than fifteen days after the issuance of a certificate of occupancy. The development agreement shall provide for the value of any deferred fees to be supported by appropriate security, including a surety bond, letter of credit or cash bond.

11. If a municipality requires as a condition of development approval the construction or improvement of, contributions to or dedication of any facilities that were not included in a previously adopted infrastructure improvements plan, the municipality shall cause the infrastructure improvements plan to be amended to include the facilities and shall provide a credit toward the payment of a development fee for the construction, improvement, contribution or dedication of the facilities to the extent that the facilities will substitute for or otherwise reduce the need for other similar facilities in the infrastructure improvements plan for which development fees were assessed.

12. The municipality shall forecast the contribution to be made in the future in cash or by taxes, fees, assessments or other sources of revenue derived from the property owner towards the capital costs of the necessary public service covered by the development fee and shall include these contributions in determining the extent of the burden imposed by the development. Beginning August 1, 2014, for purposes of calculating the required offset to development fees pursuant to this subsection, if a municipality imposes a construction contracting or similar excise tax rate in excess of the percentage amount of the transaction privilege tax rate imposed on the majority of other transaction privilege tax classifications, the entire excess portion of the construction contracting or similar excise tax shall be treated as a contribution to the capital costs of necessary public services provided to development for which development fees are assessed, unless the excess portion was already taken into account for such purpose pursuant to this subsection.

13. If development fees are assessed by a municipality, the fees shall be assessed against commercial, residential and industrial development, except that the municipality may distinguish between different categories of residential, commercial and industrial development in assessing the costs to the municipality of providing necessary public services to new development and in determining the amount of the development fee applicable to the category of development. If a municipality agrees to waive any of the development fees assessed on a development, the municipality shall reimburse the appropriate development fee accounts for the amount that was waived. The municipality shall provide notice of any such waiver to the advisory committee established pursuant to subsection G of this section within thirty days.

14. In determining and assessing a development fee applying to land in a community facilities district established under title 48, chapter 4, article 6, the municipality shall take into account all public infrastructure provided by the district and capital costs paid by the district for necessary public services and shall not assess a portion of the development fee based on the infrastructure or costs.

C. A municipality shall give at least thirty days' advance notice of intention to assess a development fee and shall release to the public and post on its website or the website of an association of cities and towns if a municipality does not have a website a written report of the land use assumptions and infrastructure improvements plan adopted pursuant to subsection D of this section. The municipality shall conduct a public hearing on the proposed development fee at any time after the expiration of the thirty day notice of intention to assess a development fee and at least thirty days before the scheduled date of adoption of the fee by the governing body. Within sixty days after the date of the public hearing on the proposed development fee, a municipality shall approve or disapprove the imposition of the development fee. A municipality shall not adopt an ordinance, order or resolution approving a development fee as an emergency measure. A development fee assessed pursuant to this section shall not be effective until seventy-five days after its formal

adoption by the governing body of the municipality. Nothing in this subsection shall affect any development fee adopted before July 24, 1982.

D. Before the adoption or amendment of a development fee, the governing body of the municipality shall adopt or update the land use assumptions and infrastructure improvements plan for the designated service area. The municipality shall conduct a public hearing on the land use assumptions and infrastructure improvements plan at least thirty days before the adoption or update of the plan. The municipality shall release the plan to the public, post the plan on its website or the website of an association of cities and towns if the municipality does not have a website, including in the posting its land use assumptions, the time period of the projections, a description of the necessary public services included in the infrastructure improvements plan and a map of the service area to which the land use assumptions apply, make available to the public the documents used to prepare the assumptions and plan and provide public notice at least sixty days before the public hearing, subject to the following:

1. The land use assumptions and infrastructure improvements plan shall be approved or disapproved within sixty days after the public hearing on the land use assumptions and infrastructure improvements plan and at least thirty days before the public hearing on the report required by subsection C of this section. A municipality shall not adopt an ordinance, order or resolution approving the land use assumptions or infrastructure improvements plan as an emergency measure.

2. An infrastructure improvements plan shall be developed by qualified professionals using generally accepted engineering and planning practices pursuant to subsection E of this section.

3. A municipality shall update the land use assumptions and infrastructure improvements plan at least every five years. The initial five year period begins on the day the infrastructure improvements plan is adopted. The municipality shall review and evaluate its current land use assumptions and shall cause an update of the infrastructure improvements plan to be prepared pursuant to this section.

4. Within sixty days after completion of the updated land use assumptions and infrastructure improvements plan, the municipality shall schedule and provide notice of a public hearing to discuss and review the update and shall determine whether to amend the assumptions and plan.

5. A municipality shall hold a public hearing to discuss the proposed amendments to the land use assumptions, the infrastructure improvements plan or the development fee. The land use assumptions and the infrastructure improvements plan, including the amount of any proposed changes to the development fee per service unit, shall be made available to the public on or before the date of the first publication of the notice of the hearing on the amendments.

6. The notice and hearing procedures prescribed in paragraph 1 of this subsection apply to a hearing on the amendment of land use assumptions, an infrastructure improvements plan or a development fee. Within sixty days after the date of the public hearing on the amendments, a municipality shall approve or disapprove the amendments to the land use assumptions, infrastructure improvements plan or development fee. A municipality shall not adopt an ordinance, order or resolution approving the amended land use assumptions, infrastructure improvements plan or development fee as an emergency measure.

7. The advisory committee established under subsection G of this section shall file its written comments on any proposed or updated land use assumptions, infrastructure improvements plan and development fees before the fifth business day before the date of the public hearing on the proposed or updated assumptions, plan and fees.

8. If, at the time an update as prescribed in paragraph 3 of this subsection is required, the municipality determines that no changes to the land use assumptions, infrastructure improvements

plan or development fees are needed, the municipality may as an alternative to the updating requirements of this subsection publish notice of its determination on its website and include the following:

(a) A statement that the municipality has determined that no change to the land use assumptions, infrastructure improvements plan or development fee is necessary.
(b) A description and map of the service area in which an update has been determined to be unnecessary.

(c) A statement that by a specified date, which shall be at least sixty days after the date of publication of the first notice, a person may make a written request to the municipality requesting that the land use assumptions, infrastructure improvements plan or development fee be updated.

(d) A statement identifying the person or entity to whom the written request for an update should be sent.

9. If, by the date specified pursuant to paragraph 8 of this subsection, a person requests in writing that the land use assumptions, infrastructure improvements plan or development fee be updated, the municipality shall cause, accept or reject an update of the assumptions and plan to be prepared pursuant to this subsection.

10. Notwithstanding the notice and hearing requirements for adoption of an infrastructure improvements plan, a municipality may amend an infrastructure improvements plan adopted pursuant to this section without a public hearing if the amendment addresses only elements of necessary public services in the existing infrastructure improvements plan and the changes to the plan will not, individually or cumulatively with other amendments adopted pursuant to this subsection, increase the level of service in the service area or cause a development fee increase of greater than five per cent when a new or modified development fee is assessed pursuant to this section. The municipality shall provide notice of any such amendment at least thirty days before adoption, shall post the amendment on its website or on the website of an association of cities and towns if the municipality does not have a website and shall provide notice to the advisory committee established pursuant to subsection G of this section that the amendment complies with this subsection.

E. For each necessary public service that is the subject of a development fee, the infrastructure improvements plan shall include:

1. A description of the existing necessary public services in the service area and the costs to upgrade, update, improve, expand, correct or replace those necessary public services to meet existing needs and usage and stricter safety, efficiency, environmental or regulatory standards, which shall be prepared by qualified professionals licensed in this state, as applicable.

2. An analysis of the total capacity, the level of current usage and commitments for usage of capacity of the existing necessary public services, which shall be prepared by qualified professionals licensed in this state, as applicable.

3. A description of all or the parts of the necessary public services or facility expansions and their costs necessitated by and attributable to development in the service area based on the approved land use assumptions, including a forecast of the costs of infrastructure, improvements, real property, financing, engineering and architectural services, which shall be prepared by qualified professionals licensed in this state, as applicable.

4. A table establishing the specific level or quantity of use, consumption, generation or discharge of a service unit for each category of necessary public services or facility expansions and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial and industrial.

5. The total number of projected service units necessitated by and attributable to new development in the service area based on the approved land use assumptions and calculated pursuant to generally accepted engineering and planning criteria.

6. The projected demand for necessary public services or facility expansions required by new service units for a period not to exceed ten years.

7. A forecast of revenues generated by new service units other than development fees, which shall include estimated state-shared revenue, highway users revenue, federal revenue, ad valorem property taxes, construction contracting or similar excise taxes and the capital recovery portion of utility fees attributable to development based on the approved land use assumptions, and a plan to include these contributions in determining the extent of the burden imposed by the development as required in subsection B, paragraph 12 of this section.

F. A municipality's development fee ordinance shall provide that a new development fee or an increased portion of a modified development fee shall not be assessed against a development for twenty-four months after the date that the municipality issues the final approval for a commercial, industrial or multifamily development or the date that the first building permit is issued for a residential development pursuant to an approved site plan or subdivision plat, provided that no subsequent changes are made to the approved site plan or subdivision plat that would increase the number of service units. If the number of service units increases, the new or increased portion of a modified development fee shall be limited to the amount attributable to the additional service units. The twenty-four month period shall not be extended by a renewal or amendment of the site plan or the final subdivision plat that was the subject of the final approval. The municipality shall issue, on request, a written statement of the development fee schedule applicable to the development. If, after the date of the municipality's final approval of a development, the municipality reduces the development fee assessed on development, the reduced fee shall apply to the development.

G. A municipality shall do one of the following:

1. Before the adoption of proposed or updated land use assumptions, infrastructure improvements plan and development fees as prescribed in subsection D of this section, the municipality shall appoint an infrastructure improvements advisory committee, subject to the following requirements:

(a) The advisory committee shall be composed of at least five members who are appointed by the governing body of the municipality. At least fifty per cent of the members of the advisory committee must be representatives of the real estate, development or building industries, of which at least one member of the committee must be from the home building industry. Members shall not be employees or officials of the municipality.

(b) The advisory committee shall serve in an advisory capacity and shall:

(i) Advise the municipality in adopting land use assumptions and in determining whether the assumptions are in conformance with the general plan of the municipality.

(ii) Review the infrastructure improvements plan and file written comments.

(iii) Monitor and evaluate implementation of the infrastructure improvements plan.

(iv) Every year file reports with respect to the progress of the infrastructure improvements plan and the collection and expenditures of development fees and report to the municipality any perceived inequities in implementing the plan or imposing the development fee.

(v) Advise the municipality of the need to update or revise the land use assumptions, infrastructure improvements plan and development fee.

(c) The municipality shall make available to the advisory committee any professional reports with respect to developing and implementing the infrastructure improvements plan.

(d) The municipality shall adopt procedural rules for the advisory committee to follow in carrying out the committee's duties.

2. In lieu of creating an advisory committee pursuant to paragraph 1 of this subsection, provide for a biennial certified audit of the municipality's land use assumptions, infrastructure improvements plan and development fees. An audit pursuant to this paragraph shall be conducted by one or more qualified professionals who are not employees or officials of the municipality and who did not prepare the infrastructure improvements plan. The audit shall review the progress of the infrastructure improvements plan, including the collection and expenditures of development fees for each project in the plan, and evaluate any inequities in implementing the plan or imposing the development fee. The municipality shall post the findings of the audit on the municipality's website or the website of an association of cities and towns if the municipality does not have a website and shall conduct a public hearing on the audit within sixty days of the release of the audit to the public.

H. On written request, an owner of real property for which a development fee has been paid after July 31, 2014 is entitled to a refund of a development fee or any part of a development fee if:

1. Pursuant to subsection B, paragraph 6 of this section, existing facilities are available and service is not provided.

2. The municipality has, after collecting the fee to construct a facility when service is not available, failed to complete construction within the time period identified in the infrastructure improvements plan, but in no event later than the time period specified in paragraph 3 of this subsection.

3. For a development fee other than a development fee for water or wastewater facilities, any part of the development fee is not spent as authorized by this section within ten years after the fee has been paid or, for a development fee for water or wastewater facilities, any part of the development fee is not spent as authorized by this section within fifteen years after the fee has been paid.

I. If the development fee was collected for the construction of all or a portion of a specific item of infrastructure, and on completion of the infrastructure the municipality determines that the actual cost of construction was less than the forecasted cost of construction on which the development fee was based and the difference between the actual and estimated cost is greater than ten per cent, the current owner may receive a refund of the portion of the development fee equal to the difference between the development fee paid and the development fee that would have been due if the development fee had been calculated at the actual construction cost.

J. A refund shall include any interest earned by the municipality from the date of collection to the date of refund on the amount of the refunded fee. All refunds shall be made to the record owner of the property at the time the refund is paid. If the development fee is paid by a governmental entity, the refund shall be paid to the governmental entity.

K. A development fee that was adopted before January 1, 2012 may continue to be assessed only to the extent that it will be used to provide a necessary public service for which development fees can be assessed pursuant to this section and shall be replaced by a development fee imposed under this section on or before August 1, 2014. Any municipality having a development fee that has not been replaced under this section on or before August 1, 2014 shall not collect development fees until the development fee has been replaced with a fee that complies with this section. Any development fee monies collected before January 1, 2012 remaining in a development fee account:

1. Shall be used towards the same category of necessary public services as authorized by this section.

2. If development fees were collected for a purpose not authorized by this section, shall be used for the purpose for which they were collected on or before January 1, 2020, and after which, if not spent, shall be distributed equally among the categories of necessary public services authorized by this section.

L. A moratorium shall not be placed on development for the sole purpose of awaiting completion of all or any part of the process necessary to develop, adopt or update development fees.

M. In any judicial action interpreting this section, all powers conferred on municipal governments in this section shall be narrowly construed to ensure that development fees are not used to impose on new residents a burden all taxpayers of a municipality should bear equally.

N. Each municipality that assesses development fees shall submit an annual report accounting for the collection and use of the fees for each service area. The annual report shall include the following:

1. The amount assessed by the municipality for each type of development fee.

2. The balance of each fund maintained for each type of development fee assessed as of the beginning and end of the fiscal year.

3. The amount of interest or other earnings on the monies in each fund as of the end of the fiscal year.

4. The amount of development fee monies used to repay:

(a) Bonds issued by the municipality to pay the cost of a capital improvement project that is the subject of a development fee assessment, including the amount needed to repay the debt service obligations on each facility for which development fees have been identified as the source of funding and the time frames in which the debt service will be repaid.

(b) Monies advanced by the municipality from funds other than the funds established for development fees in order to pay the cost of a capital improvement project that is the subject of a development fee assessment, the total amount advanced by the municipality for each facility, the source of the monies advanced and the terms under which the monies will be repaid to the municipality.

5. The amount of development fee monies spent on each capital improvement project that is the subject of a development fee assessment and the physical location of each capital improvement project.

6. The amount of development fee monies spent for each purpose other than a capital improvement project that is the subject of a development fee assessment.

O. Within ninety days following the end of each fiscal year, each municipality shall submit a copy of the annual report to the city clerk and post the report on the municipality's website or the website of an association of cities and towns if the municipality does not have a website. Copies shall be made available to the public on request. The annual report may contain financial information that has not been audited.

P. A municipality that fails to file the report and post the report on the municipality's website or the website of an association of cities and towns if the municipality does not have a website as required by this section shall not collect development fees until the report is filed and posted.

Q. Any action to collect a development fee shall be commenced within two years after the obligation to pay the fee accrues.

R. A municipality may continue to assess a development fee adopted before January 1, 2012 for any facility that was financed before June 1, 2011 if:

1. Development fees were pledged to repay debt service obligations related to the construction of the facility.

2. After August 1, 2014, any development fees collected under this subsection are used solely for the payment of principal and interest on the portion of the bonds, notes or other debt service obligations issued before June 1, 2011 to finance construction of the facility.

S. Through August 1, 2014, a development fee adopted before January 1, 2012 may be used to finance construction of a facility and may be pledged to repay debt service obligations if:

1. The facility that is being financed is a facility that is described under subsection T, paragraph 5, subdivisions (a) through (g) of this section.

2. The facility was included in an infrastructure improvements plan adopted before June 1, 2011.

3. The development fees are used for the payment of principal and interest on the portion of the bonds, notes or other debt service obligations issued to finance construction of the necessary public services or facility expansions identified in the infrastructure improvement plan.

T. For the purposes of this section:

1. "Dedication" means the actual conveyance date or the date an improvement, facility or real or personal property is placed into service, whichever occurs first.

2. "Development" means:

(a) The subdivision of land.

(b) The construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure that adds or increases the number of service units.

(c) Any use or extension of the use of land that increases the number of service units.

3. "Facility expansion" means the expansion of the capacity of an existing facility that serves the same function as an otherwise new necessary public service in order that the existing facility may serve new development. Facility expansion does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development.

4. "Final approval" means:

(a) For a nonresidential or multifamily development, the approval of a site plan or, if no site plan is submitted for the development, the approval of a final subdivision plat.

(b) For a single family residential development, the approval of a final subdivision plat.

5. "Infrastructure improvements plan" means a written plan that identifies each necessary public service or facility expansion that is proposed to be the subject of a development fee and otherwise complies with the requirements of this section, and may be the municipality's capital improvements plan.

6. "Land use assumptions" means projections of changes in land uses, densities, intensities and population for a specified service area over a period of at least ten years and pursuant to the general plan of the municipality.

7. "Necessary public service" means any of the following facilities that have a life expectancy of three or more years and that are owned and operated by or on behalf of the municipality:

(a) Water facilities, including the supply, transportation, treatment, purification and distribution of water, and any appurtenances for those facilities.

(b) Wastewater facilities, including collection, interception, transportation, treatment and disposal of wastewater, and any appurtenances for those facilities.

(c) Storm water, drainage and flood control facilities, including any appurtenances for those facilities.

(d) Library facilities of up to ten thousand square feet that provide a direct benefit to development, not including equipment, vehicles or appurtenances.

(e) Street facilities located in the service area, including arterial or collector streets or roads that have been designated on an officially adopted plan of the municipality, traffic signals and rights-of-way and improvements thereon.

(f) Fire and police facilities, including all appurtenances, equipment and vehicles. Fire and police facilities do not include a facility or portion of a facility that is used to replace services that were once provided elsewhere in the municipality, vehicles and equipment used to provide administrative services, helicopters or airplanes or a facility that is used for training firefighters or officers from more than one station or substation.

(g) Neighborhood parks and recreational facilities on real property up to thirty acres in area, or parks and recreational facilities larger than thirty acres if the facilities provide a direct benefit to the development. Park and recreational facilities do not include vehicles, equipment or that portion of any facility that is used for amusement parks, aquariums, aquatic centers, auditoriums, arenas, arts and cultural facilities, bandstand and orchestra facilities, bathhouses, boathouses, clubhouses, community centers greater than three

thousand square feet in floor area, environmental education centers, equestrian facilities, golf course facilities, greenhouses, lakes, museums, theme parks, water reclamation or riparian areas, wetlands, zoo facilities or similar recreational facilities, but may include swimming pools.

(h) Any facility that was financed and that meets all of the requirements prescribed in subsection R of this section.

8. "Qualified professional" means a professional engineer, surveyor, financial analyst or planner providing services within the scope of the person's license, education or experience.

9. "Service area" means any specified area within the boundaries of a municipality in which development will be served by necessary public services or facility expansions and within which a substantial nexus exists between the necessary public services or facility expansions and the development being served as prescribed in the infrastructure improvements plan.

10. "Service unit" means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated pursuant to generally accepted engineering or planning standards for a particular category of necessary public services or facility expansions.

Sec. 2. Laws 2009, third special session, chapter 7, section 41, as amended by laws 2010, chapter 153, section 1, is amended to read:

Sec. 41. Development fees; moratorium; retroactivity

A. Notwithstanding any other law, beginning September 1, 2009 through December 31, 2011, a municipality shall not:

1. Impose any new development fees pursuant to section 9-463.05, Arizona Revised Statutes.

2. Increase any existing development fees authorized by section 9-463.05, Arizona Revised Statutes.

B. For the purposes of this section, the date of the imposition of a new development fee or an increase in an existing development fee shall be the date of the final action by the municipality's governing body if adopted on or after March 1, 2009 and before September 1, 2009.

C. Notwithstanding subsection B of this section, any fees paid or charged on and after June 29, 2009 until July 29, 2010 shall not be retroactively increased.

D. Nothing in this section shall be construed to prevent a municipality from reducing the development fees assessed on development.

E. This section, as amended by laws 2010, chapter 153, section 1, applies retroactively to from and after August 31, 2009.

Sec. 3. Construction contracting tax rates; municipalities; retroactivity

A. Notwithstanding any other law, from and after June 30, 2011 through July 31, 2014, a municipality shall not adopt any increase in its construction contracting or similar excise tax rate to a percentage amount in excess of the transaction privilege rate imposed on the majority of other transaction privilege tax classifications.

B. This section is effective retroactively to from and after June 30, 2011.

Sec. 4. Legislative intent; grandfathered fee collections; protection of municipal debt service obligations

Pursuant to section 9-463.05, subsection R, Arizona Revised Statutes, as amended by this act, it is the intent of the legislature that a municipality may continue to collect and use a development fee adopted before January 1, 2012, even if the development fee would not otherwise be permitted to be collected and spent pursuant to this act, if:

1. The development fee has been pledged towards the repayment of debt service obligations incurred by a municipality to construct necessary public services before June 1, 2011.

2. The necessary public services were included in a municipality's infrastructure improvements plan before June 1, 2011.

3. The municipality meets all of the requirements of section 9-463.05, subsection R, Arizona Revised Statutes, as amended by this act.

Sec. 5. Effective date

Section 9-463.05, Arizona Revised Statutes, as amended by this act, is effective from and after December 31, 2011.

Title 9: Cities and Towns
Chapter 4: General Powers
Article 8: Miscellaneous

9-500.18. School district construction fees; prohibition

Notwithstanding any other law, a city or town shall not assess or collect any fees or costs from a school district or charter school for fees pursuant to section 9-463.05. This prohibition does not include fees assessed or collected for streets and water and sewer utility functions.

[downloaded November 5, 2008]

Title 11: Counties
Chapter 8: Development Fees

11-1102. County development fees; annual report

A. If a county has adopted a capital improvements plan, the county may assess development fees within the covered planning area in order to offset the capital costs for water, sewer, streets, parks and public safety

facilities determined by the plan to be necessary for public services provided by the county to a development in the planning area.

B. Development fees assessed under this section are subject to the following requirements:

1. Development fees shall result in a beneficial use to the development.

2. Monies received from development fees shall be placed in a separate fund and accounted for separately and may only be used for the purposes authorized by this section. Interest earned on monies in the separate fund shall be credited to the fund.

3. The county shall prescribe the schedule for paying the development fees. The county shall provide a credit toward the payment of the fee for the required dedication of public sites and improvements provided by the developer for which that fee is assessed. The developer of residential dwelling units shall be required to pay the fees when construction permits for the dwelling units are issued.

4. The amount of any development fees must bear a reasonable relationship to the burden of capital costs imposed on the county to provide additional necessary public services to the development. In determining the extent of the burden imposed by the development, the county shall consider, among other things, the contribution made or to be made in the future in cash by taxes, fees or assessments by the property owner toward the capital costs of the necessary public service covered by the development fee.

5. Development fees shall be assessed in a nondiscriminatory manner.

6. In determining and assessing a development fee applying to land in a community facilities district established under title 48, chapter 4, article 6, the county shall take into account all public infrastructure provided by the district and capital costs paid by the district for necessary public services and shall not assess a portion of the development fee based on the infrastructure or costs.

7. The county shall not assess or collect development fees from a school district or charter school, other than fees assessed or collected for streets and water and sewer utility functions. [added by HB 2008, effective December 31, 2009.]

C. Before assessing or increasing a development fee, the county shall:

1. Give at least one hundred twenty days' advance notice of intention to assess a new or increased development fee.

2. Release to the public a written report including all documentation that supports the assessment of a new or increased development fee.

3. Conduct a public hearing on the proposed new or increased development fee at any time after the expiration of the one hundred twenty day notice of intention to assess a new or increased development fee and at least fourteen days before the scheduled date of adoption of the new or increased fee.

D. A development fee assessed pursuant to this section is not effective for at least ninety days after its formal adoption by the board of supervisors.

E. Each county that assesses development fees shall submit an annual report accounting for the collection and use of the fees. The annual report shall include the following:

1. The amount assessed by the county for each type of development fee.

2. The balance of each fund maintained for each type of development fee assessed as of the beginning and end of the fiscal year.

3. The amount of interest or other earnings on the monies in each fund as of the end of the fiscal year.

4. The amount of development fee monies used to repay:

(a) Bonds issued by the county to pay the cost of a capital improvement project that is the subject of a development fee assessment.

(b) Monies advanced by the county from funds other than the funds established for development fees in order to pay the cost of a capital improvement project that is the subject of a development fee assessment.

5. The amount of development fee monies spent on each capital improvement project that is the subject of a development fee assessment and the physical location of each capital improvement project.

6. The amount of development fee monies spent for each purpose other than a capital improvement project that is the subject of a development fee assessment.

F. Within ninety days following the end of each fiscal year, each county shall submit a copy of the annual report to the clerk of the board of supervisors. Copies shall be made available to the public on request. The annual report may contain financial information that has not been audited.

G. A county that fails to file the report required by this section shall not collect development fees until the report is filed.

H. This section does not affect any development fee adopted before May 18, 2000.

11-1103. Development fees; intergovernmental agreements; purposes

A county may enter into an intergovernmental agreement to accept or disburse development fees for construction of a public facility pursuant to a benefit area plan, including an agreement with a city or special taxing district for the joint establishment of a needs assessment, the adoption of a benefit area plan and the imposition, collection and disbursement of development fees to implement a joint plan for development.

Arkansas Development Impact Fees Act

TITLE 14, Arkansas Code
CHAPTER 56, SUBCHAPTER 1

SB 620 passed by legislature 4/16/2003
signed by Governor as Act 1719, 4/22/2003

Underline/strike-out are changes made by SB 298
passed by legislature 3/14/07
signed by Governor as Act 310, 3/19/07

Section 2 of SB 298: This act shall be applied retroactively to July 16, 2003. Any municipality or municipal service agency that, on or after July 16, 2003, collected a utility hookup fee or access fee that fits the definition of development impact fee as defined in § 14-56-103(a)(3) shall refund any portion of the fee or fees that were not levied for making the physical connection for utility services or to recover the construction costs of the line to which the connection is made.

14-56-103. Development impact fees.

(a) As used in this section:

(1) "Capital plan" means a description of new public facilities or of new capital improvements to existing public facilities or of previous capital improvements to public facilities that continue to provide capacity available for new development that includes cost estimates and capacity available to serve new development;

(2) "Development" means any residential, multifamily, commercial, or industrial improvement to lands within a municipality or within a municipal service agency's area of service;

(3) (A) "Development impact fee" means a fee or charge imposed by a municipality or by a municipal service agency upon or against a development in order to generate revenue for funding or for recouping expenditures of the municipality or municipal service agency that are reasonably attributable to the use and occupancy of the development. A fee or charge imposed for this purpose is a "development impact fee" regardless of what the fee or charge is called.

(B) "Development impact fee" shall not include:

(i) Any ad valorem real property taxes;

(ii) Any special assessments for an improvement district;

(iii) Any ~~utility hookup fees or access fees~~ fee for making the physical connection for utility services, or any fee to recover the construction costs of the line to which the connection is made; or

(iv) Any fees for filing development plats or plans for building permits or for construction permits assessed by a municipality or a municipal service that are approximately equal to the cost of the plat, plan, or permit review process to the municipality or the municipal service agency; or

(v) Any fee paid according to a written agreement between a municipality or municipal service agency and a developer for payment of improvements contained within the agreement.

(4) "Municipality" means:

(A) A city of the first class;

(B) A city of the second class; or

(C) An incorporated town;

(5) "Municipal service agency" means:

(A) Any department, commission, utility, or agency of a municipality, including any municipally owned or controlled corporation;

(B) Any municipal improvement district, consolidated public or municipal utility system improvement district, or municipally owned nonprofit corporation that owns or operates any utility service;

(C) Any municipal water department, waterworks or joint waterworks, or a consolidated waterworks system operating under the Consolidated Waterworks Authorization Act, §§ 25-20-301 et seq.;

(D) Any municipal wastewater utility or department;

(E) Any municipal public facilities board; or

(F) Any of these municipal entities operating with another similar entity under an interlocal agreement in accordance with §§ 25-20-101 et seq. or §§ 25-20-201 et seq.;

(6) "Ordinance" means a municipal impact fee ordinance of a municipality or an authorizing rate resolution by a board of commissioners of a consolidated waterworks system authorized to set rates for its customers under the Consolidated Waterworks Authorization Act, §§ 25-20-301 et seq.; and

(7) "Public facilities" means publicly owned facilities that are one (1) or more of the following systems or a portion of those systems:

(A) Water supply, treatment, and distribution for either domestic water or for suppression of fires;

(B) Wastewater treatment and sanitary sewerage;

(C) Storm water drainage;

(D) Roads, streets, sidewalks, highways, and public transportation;

(E) Library;

(F) Parks, open space, and recreation areas;

(G) Police or public safety;

(H) Fire protection; and

(I) Ambulance or emergency medical transportation and response.

(b) A municipality or a municipal service agency may assess by ordinance a development impact fee to offset costs to the municipality or to a municipal service agency that are reasonably attributable to providing necessary public facilities to new development.

(c) (1) A municipality or municipal service agency may assess, collect, and expend development impact fees only for the planning, design, and construction of new public facilities or of capital improvements to existing public facilities that expand its capacity or for the recoupment of prior capital improvements to public facilities that created capacity available to serve new development.

(2) The development impact fee may be pledged to the payment of bonds issued by the municipality or municipal service agency to finance capital improvements or public facilities for which the development impact fee may be imposed.

(3) No development impact fee shall be assessed for or expended upon the operation or maintenance of any public facility or for the construction or improvement of public facilities that does not create additional capacity.

(d) (1) A municipality or a municipal service agency may assess and collect impact fees only from new development and only against a particular new development in reasonable proportion to the demand for additional capacity in public facilities that is reasonably attributable to the use and occupancy of that new development.

(2) The owner, resident, or tenant of a property that was assessed an impact fee and paid it in full shall have the right to make reasonable use of all public facilities that were financed by the impact fee.

(e) (1) A municipality or municipal service agency may assess, collect, and expend impact fees only under a development impact fee ordinance adopted and amended under this section.

(2) A development impact fee ordinance shall be adopted or amended by the governing body of a municipality or municipal service agency only after the municipality or municipal service agency has adopted a capital plan and level of service standards for all of the public facilities that are to be so financed.

(3) The development impact fee ordinance shall contain:

(A) A statement of the new public facilities and capital improvements to existing public facilities that are to be financed by impact fees and the level of service standards included in the capital plan for the public facilities that are to be financed with impact fees;

(B) The actual formula or formulas for assessing the impact fee, which shall be consistent with the level of service standards;

(C) The procedure by which impact fees are to be assessed and collected; and

(D) The procedure for refund of excess impact fees in accordance with subsection (h) of this section.

(f) (1) The municipality or municipal service agency shall collect the development impact fee at the time and manner and from the party as prescribed in the ordinance and shall collect the fee separate and apart

from any other charges to the development.

(2) (A) A development impact fee shall be collected at either the closing on the property by the owner or the issuance of a certificate of occupancy by the municipality.

(B) However, a municipal water or wastewater department, waterworks, joint waterworks, or consolidated waterworks system operating under the Consolidated Waterworks Authorization Act, §§ 25-20-301 et seq., may collect a development impact fee in connection with and as a condition to the installation of the water meter serving the property.

(3) At closing, the development impact fee that has been paid or will be paid for the property shall be separately enumerated on the closing statement.

(4) The ordinance may include that the development impact fee may be paid in installments at a reasonable interest rate for a fixed number of years or that the municipality or municipal service agency may negotiate agreements with the owner of the property as to the time and method of paying the impact fee.

(g) (1) The funds collected under a development impact fee ordinance shall be deposited into a special interest-bearing account.

(2) The interest earned on the moneys in the separate account shall be credited to the special fund and the funds deposited into the special account and the interest earned shall be expended only in accordance with this section.

(3) No other revenues or funds shall be deposited into the special account.

(h) (1) The municipality or municipal service agency shall refund the portion of collected development impact fees, including the accrued interest, that has not been expended seven (7) years from the date the fees were paid.

(2) (A) A refund shall be paid to the present owner of the property that was the subject of new development and against which the fee was assessed and collected.

(B) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the present owners of the property no later than thirty (30) days after the date on which the refund becomes due.

(C) The sending by regular mail of the notices to all present owners of record shall be sufficient to satisfy the requirement of notice.

(3) (A) The refund shall be made on a pro rata basis and shall be paid in full not later than ninety (90) days after the date certain upon which the refund becomes due.

(B) If the municipality or municipal service agency does not pay a refund in full within the period set in subdivision (h)(3)(A) of this section to any person entitled to a refund, that person shall have a cause of action against the municipality for the refund or the unpaid portion in the circuit court of the county in which the property is located.

(i) (1) (A) On and after July 16, 2003, a municipality or municipal service agency shall levy and collect a development impact fee only if levied and collected under ordinances enacted in compliance with this section.

(B) Beginning January 1, 2004, a municipality or municipal service agency shall collect development impact fees under ordinances enacted before July 16, 2003, or under ordinances amended after July 16, 2003, only if collected in compliance with subsections (f)-(h) of this section.

(2) However, except for the compliance with the collection requirements under subsections (f)-(h) of this section, this section does not invalidate any development impact fee or a similar fee adopted by a municipality or municipal service agency before July 16, 2003, nor does this section apply to funds collected under any development impact fee or similar fee adopted July 16, 2003.

(3) In addition, a municipality with a park land or green space ordinance that has been in existence for ten (10) years on July 16, 2003, and any amendments to the ordinance, which allows the option to pay a fee or to dedicate green space or park land in lieu of a fee, may continue to be administered under the existing ordinance.

California Impact Fee Acts

[downloaded September 11, 2011]

MITIGATION FEE ACT
QUIMBY ACT
SCHOOL IMPACT FEE STATUTES

MITIGATION FEE ACT

downloaded January 8, 2005

CHAPTER 5. FEES FOR DEVELOPMENT PROJECTS (SECTION 66000-66008)

66000. As used in this chapter, the following terms have the following meanings:

(a) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(b) "Fee" means a monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies that provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, authority, agency, any other municipal public corporation or district, or other political subdivision of the state.

(d) "Public facilities" includes public improvements, public services, and community amenities.

66000.5.

(a) This chapter, Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) shall be known and may be cited as the Mitigation Fee Act.

(b) Any action brought in the superior court relating to the Mitigation Fee Act may be subject to a mediation proceeding conducted pursuant to Chapter 9.3 (commencing with Section 66030).

66001.

(a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency, the local agency shall do all of the following:

(1) Identify the purpose of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(b) In any action imposing a fee as a condition of approval of a development project by a local agency, the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

(c) Upon receipt of a fee subject to this section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 66006.

(d) (1) For the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the local agency shall make all of the following findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted:

(A) Identify the purpose to which the fee is to be put.

(B) Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.

(C) Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements identified in paragraph (2) of subdivision (a).

(D) Designate the approximate dates on which the funding referred to in subparagraph (C) is expected to be deposited into the appropriate account or fund.

(2) When findings are required by this subdivision, they shall be made in connection with the public information required by subdivision (b) of Section 66006. The findings required by this subdivision need only be made for moneys in possession of the local agency, and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date. If the findings are not made as required by this subdivision, the local agency shall refund the moneys in the account or fund as provided in subdivision (e).

(e) Except as provided in subdivision (f), when sufficient funds have been collected, as determined pursuant to subparagraph (F) of paragraph (1) of subdivision (b) of Section 66006, to complete financing on incomplete public improvements identified in paragraph (2) of subdivision (a), and the public improvements remain incomplete, the local agency shall identify, within 180 days of the determination that sufficient funds have been collected, an approximate date by which the construction of the public improvement will be commenced, or shall refund to the then current record owner or owners of the lots or units, as identified on the last equalized assessment roll, of the development project or projects on a prorated basis, the unexpended portion of the fee, and any interest accrued thereon. By means consistent with the intent of this section, a local agency may refund the unexpended revenues by direct payment, by providing a temporary suspension of fees, or by any other reasonable means. The determination by the governing body of the local agency of the means by which those revenues are to be refunded is a legislative act.

(f) If the administrative costs of refunding unexpended revenues pursuant to subdivision (e) exceed the amount to be refunded, the local agency, after a public hearing, notice of which has been published pursuant to Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which fees are collected subject to this chapter and which serves the project on which the fee was originally imposed.

(g) A fee shall not include the costs attributable to existing deficiencies in public facilities, but may include the costs attributable to the increased demand for public facilities reasonably related to the development project in order to (1) refurbish existing facilities to maintain the existing level of service or (2) achieve an adopted level of service that is consistent with the general plan.

66002.

(a) Any local agency which levies a fee subject to Section 66001 may adopt a capital improvement plan, which shall indicate the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees.

(b) The capital improvement plan shall be adopted by, and shall be annually updated by, a resolution of the governing body of the local agency adopted at a noticed public hearing. Notice of the hearing shall be given pursuant to Section 65090. In addition, mailed notice shall be given to any city or county which may be significantly affected by the capital improvement plan. This notice shall be given no later than the date the local agency notices the public hearing pursuant to Section 65090. The information in the notice shall be not less than the information contained in the notice of public hearing and shall be given by first-class mail or personal delivery.

(c) "Facility" or "improvement," as used in this section, means any of the following:

(1) Public buildings, including schools and related facilities; provided that school facilities shall not be included if Senate Bill 97 of the 1987-88 Regular Session is enacted and becomes effective on or before January 1, 1988.

(2) Facilities for the storage, treatment, and distribution of nonagricultural water.

(3) Facilities for the collection, treatment, reclamation, and disposal of sewage.

(4) Facilities for the collection and disposal of storm waters and for flood control purposes.

(5) Facilities for the generation of electricity and the distribution of gas and electricity.

(6) Transportation and transit facilities, including but not limited to streets and supporting improvements, roads, overpasses, bridges, harbors, ports, airports, and related facilities.

(7) Parks and recreation facilities.

(8) Any other capital project identified in the capital facilities plan adopted pursuant to Section 66002.

66003. Sections 66001 and 66002 do not apply to a fee imposed pursuant to a reimbursement agreement by and between a local agency and a property owner or developer for that portion of the cost of a public facility paid by the property owner or developer which exceeds the need for the public facility attributable to and reasonably related to the development. This chapter shall become operative on January 1, 1989.

66004. The establishment or increase of any fee pursuant to this chapter shall be subject to the requirements of Section 66018.

66005.

(a) When a local agency imposes any fee or exaction as a condition of approval of a proposed development, as defined by Section 65927, or development project, those fees or exactions shall not exceed the estimated reasonable cost of providing the service or facility for which the fee or exaction is imposed.

(b) This section does not apply to fees or monetary exactions expressly authorized to be imposed under Sections 66475.1 and 66477.

(c) It is the intent of the Legislature in adding this section to codify existing constitutional and decisional law with respect to the imposition of development fees and monetary exactions on developments by local agencies. This section is declaratory of existing law and shall not be construed or interpreted as creating new law or as modifying or changing existing law.

66005.1.

(a) When a local agency imposes a fee on a housing development pursuant to Section 66001 for the purpose of mitigating vehicular traffic impacts, if that housing development satisfies all of the following characteristics, the fee, or the portion thereof relating to vehicular traffic impacts, shall be set at a rate that reflects a lower rate of automobile trip generation associated with such housing developments in comparison with housing developments without these characteristics, unless the local agency adopts findings after a

public hearing establishing that the housing development, even with these characteristics, would not generate fewer automobile trips than a housing development without those characteristics:

(1) The housing development is located within one-half mile of a transit station and there is direct access between the housing development and the transit station along a barrier-free walkable pathway not exceeding one-half mile in length.

(2) Convenience retail uses, including a store that sells food, are located within one-half mile of the housing development.

(3) The housing development provides either the minimum number of parking spaces required by the local ordinance, or no more than one onsite parking space for zero to two bedroom units, and two onsite parking spaces for three or more bedroom units, whichever is less.

(b) If a housing development does not satisfy the characteristics in subdivision (a), the local agency may charge a fee that is proportional to the estimated rate of automobile trip generation associated with the housing development.

(c) As used in this section, "housing development" means a development project with common ownership and financing consisting of residential use or mixed use where not less than 50 percent of the floorspace is for residential use.

(d) For the purposes of this section, "transit station" has the meaning set forth in paragraph (4) of subdivision (b) of Section 65460.1. "Transit station" includes planned transit stations otherwise meeting this definition whose construction is programmed to be completed prior to the scheduled completion and occupancy of the housing development.

(e) This section shall become operative on January 1, 2011.

66006.

(a) If a local agency requires the payment of a fee specified in subdivision (c) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected.

(b) (1) For each separate account or fund established pursuant to subdivision (a), the local agency shall, within 180 days after the last day of each fiscal year, make available to the public the following information for the fiscal year:

(A) A brief description of the type of fee in the account or fund.

(B) The amount of the fee.

(C) The beginning and ending balance of the account or fund.

(D) The amount of the fees collected and the interest earned.

(E) An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.

(F) An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Section 66001, and the public improvement remains incomplete.

(G) A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.

(H) The amount of refunds made pursuant to subdivision (e) of Section 66001 and any allocations pursuant to subdivision (f) of Section 66001.

(2) The local agency shall review the information made available to the public pursuant to paragraph (1) at the next regularly scheduled public meeting not less than 15 days after this information is made available to the public, as required by this subdivision. Notice of the time and

place of the meeting, including the address where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a written request with the local agency for mailed notice of the meeting. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(c) For purposes of this section, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee for public improvements within the meaning of subdivision (b) of Section 66000, and that is imposed by the local agency as a condition of approving the development project.

(d) Any person may request an audit of any local agency fee or charge that is subject to Section 66023, including fees or charges of school districts, in accordance with that section.

(e) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this section shall supersede all conflicting local laws and shall apply in charter cities.

(f) At the time the local agency imposes a fee for public improvements on a specific development project, it shall identify the public improvement that the fee will be used to finance.

66006.5.

(a) A city or county which imposes an assessment, fee, or charge, other than a tax, for transportation purposes may, by ordinance, prescribe conditions and procedures allowing real property which is needed by the city or county for local transportation purposes, or by the state for transportation projects which will not receive any federal funds, to be donated by the obligor in satisfaction or partial satisfaction of the assessment, fee, or charge.

(b) To facilitate the implementation of subdivision (a), the Department of Transportation shall do all of the following:

(1) Give priority to the refinement, modification, and enhancement of procedures and policies dealing with right-of-way donations in order to encourage and facilitate those donations.

(2) Reduce or simplify paperwork requirements involving right-of-way procurement.

(3) Increase communication and education efforts as a means to solicit and encourage voluntary right-of-way donations.

(4) Enhance communication and coordination with local public entities through agreements of understanding that address state acceptance of right-of-way donations.

66007.

(a) Except as otherwise provided in subdivisions (b) and (g), any local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) (1) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if

(A) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or

(B) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of

the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(2) (A) Paragraph (1) does not apply to units reserved for occupancy by lower income households included in a residential development proposed by a nonprofit housing developer in which at least 49 percent of the total units are reserved for occupancy by lower income households, as defined in Section 50079.5 of the Health and Safety Code, at an affordable rent, as defined in Section 50053 of the Health and Safety Code. In addition to the contract that may be required under subdivision (c), a city, county, or city and county may require the posting of a performance bond or a letter of credit from a federally insured, recognized depository institution to guarantee payment of any fees or charges that are subject to this paragraph. Fees and charges exempted from paragraph (1) under this paragraph shall become immediately due and payable when the residential development no longer meets the requirements of this paragraph.

(B) The exception provided in subparagraph (A) does not apply to fees and charges levied pursuant to Chapter 6 (commencing with Section 17620) of Part 10.5 of Division 1 of Title 1 of the Education Code.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. The local agency shall record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated pursuant to subdivision (a).

(3) The contract may require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 edition.

(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted, include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17017.5 of the Education Code.

(g) A local agency may defer the collection of one or more fees up to the close of escrow. This subdivision shall not apply to fees and charges levied pursuant to Chapter 6 (commencing with Section 17620) of Part 10.5 of Division 1 of Title 1 of the Education Code.

66008. A local agency shall expend a fee for public improvements, as accounted for pursuant to Section 66006, solely and exclusively for the purpose or purposes, as identified in subdivision (f) of Section 66006, for which the fee was collected. The fee shall not be levied, collected, or imposed for general revenue purposes.

CHAPTER 6. FEES FOR DEVELOPMENT PROJECTS RECONSTRUCTED AFTER A NATURAL DISASTER (SECTION 66010-66011)

66010. As used in this chapter:

(a) "Development project" means a development project as defined in Section 66000.

(b) "Fee" means a monetary exaction or a dedication, other than a tax or special assessment, which is required by a local agency of the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees for processing applications for governmental regulatory actions or approvals.

(c) "Local agency" means a local agency, as defined in Section 66000.

(d) "Public facilities" means public facilities, as defined in Section 66000.

(e) "Reconstruction" means the reconstruction of the real property, or portion thereof, where the property after reconstruction is substantially equivalent to the property prior to damage or destruction.

66011. No fee may be applied by a local agency to the reconstruction of any residential, commercial, or industrial development project that is damaged or destroyed as a result of a natural disaster, as declared by the Governor. Any reconstruction of real property, or portion thereof, which is not substantially equivalent to the damaged or destroyed property, shall be deemed to be new construction and only that portion which exceeds substantially equivalent construction may be assessed a fee. The term substantially equivalent, as used in this section, shall have the same meaning as the term in subdivision (c) of Section 70 of the Revenue and Taxation Code.

CHAPTER 7. FEES FOR SPECIFIC PURPOSES (SECTION 66012-66014)

66012.

(a) Notwithstanding any other provision of law which prescribes an amount or otherwise limits the amount of a fee or charge which may be levied by a city, county, or city and county, a city, county, or city and county shall have the authority to levy any fee or charge in connection with the operation of an aerial tramway within its jurisdiction.

(b) If any person disputes whether a fee or charge levied pursuant to subdivision (a) is reasonable, the auditor, or if there is no auditor, the fiscal officer, of the city, county, or city and county shall, upon request of the legislative body of the city, county, or city and county, conduct a study and determine whether the fee or charge is reasonable.

66013.

(a) Notwithstanding any other provision of law, when a local agency imposes fees for water connections or sewer connections, or imposes capacity charges, those fees or charges shall not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed, unless a question regarding the amount of the fee or charge imposed in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue.

(b) As used in this section:

(1) "Sewer connection" means the connection of a structure or project to a public sewer system.

(2) "Water connection" means the connection of a structure or project to a public water system, as defined in subdivision (f) of Section 116275 of the Health and Safety Code.

(3) "Capacity charge" means a charge for public facilities in existence at the time a charge is imposed or charges for new public facilities to be acquired or constructed in the future that are of proportional benefit to the person or property being charged, including supply or capacity contracts for rights or entitlements, real property interests, and entitlements and other rights of the local agency involving capital expense relating to its use of existing or new public facilities. A "capacity charge" does not include a commodity charge.

(4) "Local agency" means a local agency as defined in Section 66000.

(5) "Fee" means a fee for the physical facilities necessary to make a water connection or sewer connection, including, but not limited to, meters, meter boxes, and pipelines from the structure or project to a water distribution line or sewer main, and that does not exceed the estimated reasonable cost of labor and materials for installation of those facilities.

(6) "Public facilities" means public facilities as defined in Section 66000.

(c) A local agency receiving payment of a charge as specified in paragraph (3) of subdivision (b) shall deposit it in a separate capital facilities fund with other charges received, and account for the charges in a manner to avoid any commingling with other moneys of the local agency, except for investments, and shall expend those charges solely for the purposes for which the charges were collected. Any interest income earned from the investment of moneys in the capital facilities fund shall be deposited in that fund.

(d) For a fund established pursuant to subdivision (c), a local agency shall make available to the public, within 180 days after the last day of each fiscal year, the following information for that fiscal year:

(1) A description of the charges deposited in the fund.

(2) The beginning and ending balance of the fund and the interest earned from investment of moneys in the fund.

(3) The amount of charges collected in that fiscal year.

(4) An identification of all of the following:

(A) Each public improvement on which charges were expended and the amount of the expenditure for each improvement, including the percentage of the total cost of the public improvement that was funded with those charges if more than one source of funding was used.

(B) Each public improvement on which charges were expended that was completed during that fiscal year.

(C) Each public improvement that is anticipated to be undertaken in the following fiscal year.

(5) A description of each interfund transfer or loan made from the capital facilities fund. The information provided, in the case of an interfund transfer, shall identify the public improvements on which the transferred moneys are, or will be, expended. The information, in the case of an interfund loan, shall include the date on which the loan will be repaid, and the rate of interest that the fund will receive on the loan.

(e) The information required pursuant to subdivision (d) may be included in the local agency's annual financial report.

(f) The provisions of subdivisions (c) and (d) shall not apply to any of the following:

(1) Moneys received to construct public facilities pursuant to a contract between a local agency and a person or entity, including, but not limited to, a reimbursement agreement pursuant to Section 66003.

(2) Charges that are used to pay existing debt service or which are subject to a contract with a trustee for bondholders that requires a different accounting of the charges, or charges that are used to reimburse the local agency or to reimburse a person or entity who advanced funds under a reimbursement agreement or contract for facilities in existence at the time the charges are collected.

(3) Charges collected on or before December 31, 1998.

(g) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion imposing a fee or capacity charge subject to this section shall be brought pursuant to Section 66022.

(h) Fees and charges subject to this section are not subject to the provisions of Chapter 5 (commencing with Section 66000), but are subject to the provisions of Sections 66016, 66022, and 66023.

(i) The provisions of subdivisions (c) and (d) shall only apply to capacity charges levied pursuant to this section.

66014.

(a) Notwithstanding any other provision of law, when a local agency charges fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5; the processing of maps under the provisions of the Subdivision

Map Act, Division 2 (commencing with Section 66410) of Title 7; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 or under any other authority; those fees may not exceed the estimated reasonable cost of providing the service for which the fee is charged, unless a question regarding the amount of the fee charged in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue.

(b) The fees charged pursuant to subdivision (a) may include the costs reasonably necessary to prepare and revise the plans and policies that a local agency is required to adopt before it can make any necessary findings and determinations.

(c) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion authorizing the charge of a fee subject to this section shall be brought pursuant to Section 66022.

CHAPTER 8. PROCEDURES FOR ADOPTING VARIOUS FEES (SECTION 66016-66018.5)

66016.

(a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one open and public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution. The legislative body of a local agency shall not delegate the authority to adopt a new fee or service charge, or to increase a fee or service charge.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This section shall apply only to fees and charges as described in Sections 51287, 56383, 65104, 65456, 65584.1, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022.

66017.

(a) Any action adopting a fee or charge, or increasing a fee or charge adopted, upon a development project, as defined in Section 66000, which applies to the filing, accepting, reviewing, approving, or issuing of an application, permit, or entitlement to use shall be enacted in accordance with the notice and public hearing procedures specified in Section 54986 or 66016 and shall be effective no sooner than 60 days following the final action on the adoption of the fee or charge or increase in the fee or charge.

(b) Without following the procedure otherwise required for the adoption of a fee or charge, or increasing a fee or charge, the legislative body of a local agency may adopt an urgency measure as an interim authorization for a fee or charge, or increase in a fee or charge, to protect the public health, welfare and safety. The interim authorization shall require four-fifths vote of the legislative body for adoption. The interim authorization

shall have no force or effect 30 days after its adoption. The interim authority shall contain findings describing the current and immediate threat to the public health, welfare, and safety. After notice and public hearing pursuant to Section 54986 or 66016, the legislative body may extend the interim authority for an additional 30 days. Not more than two extensions may be granted. Any extension shall also require a four-fifths vote of the legislative body.

66018.

(a) Prior to adopting an ordinance, resolution, or other legislative enactment adopting a new fee or approving an increase in an existing fee to which this section applies, a local agency shall hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, shall be published in accordance with Section 6062a.

(b) Any costs incurred by a local agency in conducting the hearing required pursuant to subdivision (a) may be recovered as part of the fees which were the subject of the hearing.

(c) This section applies only to the adopting or increasing of fees to which a specific statutory notice requirement, other than Section 54954.2, does not apply.

(d) As used in this section, "fees" do not include rates or charges for water, sewer, or electrical service.

66018.5. "Local agency," as used in this chapter, has the same meaning as provided in Section 66000.

66019.

(a) As used in this section:

(1) "Fee" means a fee as defined in Section 66000, but does not include any of the following:

(A) A fee authorized pursuant to Section 66013.

(B) A fee authorized pursuant to Section 17620 of the Education Code, or Sections 65995.5 and 65995.7.

(C) Rates or charges for water, sewer, or electrical services.

(D) Fees subject to Section 66016.

(2) "Party" means a person, entity, or organization representing a group of people or entities.

(3) "Public facility" means a public facility as defined in Section 66000.

(b) For any fee, notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this subdivision is available shall be mailed at least 14 days prior to the first meeting to an interested party who files a written request with the city, county, or city and county for mailed notice of a meeting on a new or increased fee to be enacted by the city, county, or city and county. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body of the city, county, or city and county may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. The legislative body may send the notice electronically. At least 10 days prior to the meeting, the city, county, or city and county shall make available to the public the data indicating the amount of cost, or the estimated cost, required to provide the public facilities and the revenue sources anticipated to fund those public facilities, including general fund revenues. The new or increased fee shall be effective no earlier than 60 days following the final action on the adoption or increase of the fee, unless the city, county, or city and county follows the procedures set forth in subdivision (b) of Section 66017.

(c) If a city, county, or city and county receives a request for mailed notice pursuant to this section, or a local agency receives a request for mailed notice pursuant to Section 66016, the city, county, or city and county or other local agency may provide the notice via electronic mail for those who specifically request electronic mail notification. A city, county, city or county, or other local agency that provides electronic mail notification pursuant to this subdivision shall send the electronic mail notification to the electronic mail address indicated in the request. The electronic mail notification authorized by this subdivision shall operate as an alternative to the mailed notice required by this section.

CHAPTER 9. PROTESTS, LEGAL ACTIONS, AND AUDITS (SECTION 66020-66025)

66020.

(a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a development project, as defined in Section 66000, by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information:

(A) A statement that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development project. This section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d) (1) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a development project. Each local agency shall provide to the project applicant a notice in writing at the time of the approval of the project or at the time of the imposition of the fees, dedications, reservations, or other exactions, a statement of the amount of the fees or a description of the dedications, reservations, or other exactions, and notification that the 90-day approval period in which the applicant may protest has begun.

(2) Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a development project by a local agency within 180 days after the delivery of the notice. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f) (1) If the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction, the court shall direct the local agency to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed.

(2) If an action is filed within 120 days of the date at which an ordinance or resolution to establish or modify a fee, dedication, reservation, or other exactions to be imposed on a development project takes effect, the portion of the payment or exaction invalidated shall also be returned to any other

person who, under protest pursuant to this section and under that invalid portion of that same ordinance or resolution as enacted, tendered the payment or provided for or satisfied the exaction during the period from 90 days prior to the date of the filing of the action which invalidates the payment or exaction to the date of the entry of the judgment referenced in paragraph (1).

(g) Approval or conditional approval of a development occurs, for the purposes of this section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(h) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this section, when they are imposed or levied on a specific development.

66021.

(a) Any party on whom a fee, tax, assessment, dedication, reservation, or other exaction has been imposed, the payment or performance of which is required to obtain governmental approval of a development, as defined by Section 65927, or development project, may protest the establishment or imposition of the fee, tax, assessment, dedication, reservation, or other exaction as provided in Section 66020.

(b) The protest procedures of subdivision (a) do not apply to the protest of any tax or assessment (1) levied pursuant to a principal act that contains protest procedures, or (2) that is pledged to secure payment of the principal of, or interest on, bonds or other public indebtedness.

66022.

(a) Any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting a new fee or service charge, or modifying or amending an existing fee or service charge, adopted by a local agency, as defined in Section 66000, shall be commenced within 120 days of the effective date of the ordinance, resolution, or motion.

If an ordinance, resolution, or motion provides for an automatic adjustment in a fee or service charge, and the automatic adjustment results in an increase in the amount of a fee or service charge, any action or proceeding to attack, review, set aside, void, or annul the increase shall be commenced within 120 days of the effective date of the increase.

(b) Any action by a local agency or interested person under this section shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(c) This section shall apply only to fees, capacity charges, and service charges described in and subject to Sections 66013, 66014, and 66016.

66023.

(a) Any person may request an audit in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product, public facility, as defined in Section 66000, or service provided by the local agency. If a person makes that request, the legislative body of the local agency may retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable, but is not required to conduct the audit if an audit has been performed for the same fee within the previous 12 months.

(b) To the extent that the audit determines that the amount of any fee or charge does not meet the requirements of this section, the local agency shall adjust the fee accordingly. This subdivision does not apply to a fee authorized pursuant to Section 17620 of the Education Code, or Sections 65995.5 and 65995.7.

(c) The local agency shall retain an independent auditor to conduct an audit only if the person who requests the audit deposits with the local agency the amount of the local agency's reasonable estimate of the cost of the independent audit. At the conclusion of the audit, the local agency shall reimburse unused sums, if any, or the requesting person shall pay the local agency the excess of the actual cost of the audit over the sum which was deposited.

(d) Any audit conducted by an independent auditor to determine whether a fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of providing the product or service shall conform to generally accepted auditing standards.

(e) The procedures specified in this section shall be alternative and in addition to those specified in Section 54985.

(f) The Legislature finds and declares that oversight of local agency fees is a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this chapter shall supersede all conflicting local laws and shall apply in charter cities.

(g) This section shall not be construed as granting any additional authority to any local agency to levy any fee or charge which is not otherwise authorized by another provision of law, nor shall its provisions be construed as granting authority to any local agency to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge.

66024.

(a) In any judicial action or proceeding to validate, attack, review, set aside, void, or annul any ordinance or resolution providing for the imposition of a development fee by any city, county, or district in which there is at issue whether the development fee is a special tax within the meaning of Section 50076, the city, county, or district has the burden of producing evidence to establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed.

(b) No party may initiate any action or proceeding pursuant to subdivision (a) unless both of the following requirements are met:

(1) The development fee was directly imposed on the party as a condition of project approval.

(2) At least 30 days prior to initiating the action or proceeding, the party requests the city, county, or district to provide a copy of the documents which establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed. In accordance with Section 6257, the city, county, or district may charge a fee for copying the documents requested pursuant to this paragraph.

(c) For purposes of this section, costs shall be determined in accordance with fundamental fairness and consistency of method as to the allocation of costs, expenses, revenues, and other items included in the calculation.

66025. "Local agency," as used in this chapter, means a local agency as defined in Section 66000.

CHAPTER 9.3. MEDIATION AND RESOLUTION OF LAND USE DISPUTES (SECTIONS 66030-66037)

66030.

(a) The Legislature finds and declares all of the following:

(1) Current law provides that aggrieved agencies, project proponents, and affected residents may bring suit against the land use decisions of state and local governmental agencies. In practical terms, nearly anyone can sue once a project has been approved.

(2) Contention often arises over projects involving local general plans and zoning, redevelopment plans, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), development impact fees, annexations and incorporations, and the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

(3) When a public agency approves a development project that is not in accordance with the law, or when the prerogative to bring suit is abused, lawsuits can delay development, add uncertainty and cost to the development process, make housing more expensive, and damage California's competitiveness. This litigation begins in the superior court, and often progresses on appeal to the Court of Appeal and the Supreme Court, adding to the workload of the state's already overburdened judicial system.

(b) It is, therefore, the intent of the Legislature to help litigants resolve their differences by establishing formal mediation processes for land use disputes. In establishing these mediation processes, it is not the intent of the Legislature to interfere with the ability of litigants to pursue remedies through the courts.

66031. (a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Chapter 6 (commencing with Section 17620) of Division 1 of Part 10.5 of the Education Code or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to the Mitigation Fee Act (Chapter 5 (commencing with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020)).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(9) The validity of any zoning decision made pursuant to Chapter 4 (commencing with Section 65800).

(10) The validity of any decision made pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the county where the dispute arose.

(3) Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency that can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.

66032.

(a) Except as provided in subdivision (c) of Section 21167.8 of the Public Resources Code, all time limits with respect to an action shall be tolled while the mediator conducts the mediation, pursuant to this chapter.

(b) Mediations conducted by a mediator pursuant to this chapter that involve less than a quorum of a legislative body or a state body shall not be considered meetings of a legislative body pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), nor shall they be considered meetings of a state body pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

(c) Any action taken regarding mediation conducted pursuant to this chapter shall be taken in accordance with the provisions of current law.

(d) Ninety days after the commencement of the mediation, and every 90 days thereafter, the action shall be reactivated unless the parties to the action do either of the following:

(1) Arrive at a settlement and implement it in accordance with the provisions of current law.

(2) Agree by written stipulation to extend the mediation for another 90-day period.

(e) Section 703.5 and Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code apply to any mediation conducted pursuant to this chapter.

(f) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

66032.

(a) Notwithstanding any provision of law to the contrary, all time limits with respect to an action shall be tolled while the mediator conducts the mediation, pursuant to this chapter.

(b) Mediations conducted by a mediator pursuant to this chapter that involve less than a quorum of a legislative body or a state body shall not be considered meetings of a legislative body pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), nor shall they be considered meetings of a state body pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

(c) Any action taken regarding mediation conducted pursuant to this chapter shall be taken in accordance with the provisions of current law.

(d) Ninety days after the commencement of the mediation, and every 90 days thereafter, the action shall be reactivated unless the parties to the action do either of the following:

(1) Arrive at a settlement and implement it in accordance with the provisions of current law.

(2) Agree by written stipulation to extend the mediation for another 90-day period.

(e) Section 703.5 and Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code apply to any mediation conducted pursuant to this chapter.

(f) This section shall become operative on January 1, 2016.

66033.

(a) At the end of the mediation, the mediator shall file a report with the Office of Permit Assistance, consistent with Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code, containing each of the following:

(1) The title of the action.

(2) The names of the parties to the action.

(3) An estimate of the costs avoided, if any, because the parties used mediation instead of litigation to resolve their dispute.

(b) The sole purpose of the report required by this section is the collection of information needed by the office to prepare its report to the Legislature pursuant to Section 66036.

66034. If the mediation does not resolve the action, the court may, in its discretion, schedule a settlement conference before a judge of the superior court. If the action is later heard on its merits, the judge hearing the action shall not be the same judge who conducted the settlement conference, except in counties with only one judge of the superior court.

66035. The Judicial Council may adopt rules, forms, and standards necessary to implement this chapter.

Not part of Mitigation Fee Act, but prohibits use of impact fees for O&M:

65913.8. A fee, charge, or other form of payment imposed by a governing body of a local agency for a public capital facility improvement related to a development project may not include an amount for the maintenance or operation of an improvement when the fee, charge, or other form of payment is required as a condition of the approval of a development project, or required to fulfill a condition of the approval. However, a fee, charge, or other form of payment may be required for the maintenance and operation of an improvement meeting the criteria of either subdivision (a) or (b), as follows:

(a) The improvement is (1) designed and installed to serve only the specific development project on which the fee, charge, or other form of payment is imposed, (2) the improvement serves 19 or fewer lots or units, and (3) the local agency makes a finding, based upon substantial evidence, that it is infeasible or impractical to form a public entity for maintenance of the improvement or to annex the property served by the improvement to an entity as described in subdivision (b).

(b) The improvement is within a water district, sewer maintenance district, street lighting district, or drainage district. In these circumstances, a payment for maintenance or operation may be required for a period not to exceed 24 months when, subsequent to the construction of the improvement, either the local agency forms a public entity or assessment district to finance the maintenance or operation, or the area containing the improvement is annexed to a public entity that will finance the maintenance or operation, whichever is earlier. The local agency may extend a fee, charge, or other form of payment pursuant to this section once for whatever duration it deems reasonable beyond the 24-month period upon making a finding, based upon substantial evidence, that this time period is insufficient for creation of, or annexation to, a public entity or an assessment district that would finance the maintenance or operation.

As used in this section, "development project" and "local agency" have the same meaning as provided in subdivisions (a) and (c) of Section 66000.

QUIMBY ACT:

CALIFORNIA GOVERNMENT CODE
TITLE 7. PLANNING AND LAND USE
DIVISION 2. SUBDIVISIONS
CHAPTER 4. REQUIREMENTS
Article 3. Dedications

downloaded September 11, 2011

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66477.

(a) The legislative body of a city or county may, by ordinance, require the dedication of land or impose a requirement of the payment of fees in lieu thereof, or a combination of both, for park or recreational purposes as a condition to the approval of a tentative map or parcel map, if all of the following requirements are met:

(1) The ordinance has been in effect for a period of 30 days prior to the filing of the tentative map of the subdivision or parcel map.

(2) The ordinance includes definite standards for determining the proportion of a subdivision to be dedicated and the amount of any fee to be paid in lieu thereof. The amount of land dedicated or fees paid shall be based upon the residential density, which shall be determined on the basis of the approved or conditionally approved tentative map or parcel map and the average number of persons per household. There shall be a rebuttable presumption that the average number of persons per household by units in a structure is the same as that disclosed by the most recent available federal census or a census taken pursuant to Chapter 17 (commencing with Section 40200) of Part 2 of Division 3 of Title 4. However, the dedication of land, or the payment of fees, or both, shall not exceed the proportionate amount necessary to provide three acres of park area per 1,000 persons residing within a subdivision subject to this section, unless the amount of existing neighborhood and community park area, as calculated pursuant to this subdivision, exceeds that limit, in which case the legislative body may adopt the calculated amount as a higher standard not to exceed five acres per 1,000 persons residing within a subdivision subject to this section.

(A) The park area per 1,000 members of the population of the city, county, or local public agency shall be derived from the ratio that the amount of neighborhood and community park acreage bears to the total population of the city, county, or local public agency as shown in the most recent available federal census. The amount of neighborhood and community park acreage shall be the actual acreage of existing neighborhood and community parks of the city, county, or local public agency as shown on its records, plans, recreational element, maps, or reports as of the date of the most recent available federal census.

(B) For cities incorporated after the date of the most recent available federal census, the park area per 1,000 members of the population of the city shall be derived from the ratio that the amount of neighborhood and community park acreage shown on the records, maps, or reports of the county in which the newly incorporated city is located bears to the total population of the new city as determined pursuant to Section 11005 of the Revenue and Taxation Code. In making any subsequent calculations pursuant to this section, the county in which the newly incorporated city is located shall not include the figures pertaining to the new city which were calculated pursuant to this paragraph. Fees shall be payable at the time of the recording of the final map or parcel map or at a later time as may be prescribed by local ordinance.

(3) The land, fees, or combination thereof are to be used only for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities to serve the subdivision.

(4) The legislative body has adopted a general plan or specific plan containing policies and standards for parks and recreation facilities, and the park and recreational facilities are in accordance with definite principles and standards.

(5) The amount and location of land to be dedicated or the fees to be paid shall bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision.

(6) The city, county, or other local public agency to which the land or fees are conveyed or paid shall develop a schedule specifying how, when, and where it will use the land or fees, or both, to develop park or recreational facilities to serve the residents of the subdivision. Any fees collected under the ordinance shall be committed within five years after the payment of the fees or the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later. If the fees are not committed, they, without any deductions, shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of their lot bears to the total area of all lots within the subdivision.

(7) Only the payment of fees may be required in subdivisions containing 50 parcels or less, except that when a condominium project, stock cooperative, or community apartment project, as those terms are defined in Section 1351 of the Civil Code, exceeds 50 dwelling units, dedication of land may be required notwithstanding that the number of parcels may be less than 50.

(8) Subdivisions containing less than five parcels and not used for residential purposes shall be exempted from the requirements of this section. However, in that event, a condition may be placed on the approval of a parcel map that if a building permit is requested for construction of a residential structure or structures on one or more of the parcels within four years, the fee may be required to be paid by the owner of each parcel as a condition of the issuance of the permit.

(9) If the subdivider provides park and recreational improvements to the dedicated land, the value of the improvements together with any equipment located thereon shall be a credit against the payment of fees or dedication of land required by the ordinance.

(b) Land or fees required under this section shall be conveyed or paid directly to the local public agency which provides park and recreational services on a communitywide level and to the area within which the proposed development will be located, if that agency elects to accept the land or fee. The local agency accepting the land or funds shall develop the land or use the funds in the manner provided in this section.

(c) If park and recreational services and facilities are provided by a public agency other than a city or a county, the amount and location of land to be dedicated or fees to be paid shall, subject to paragraph (2) of subdivision (a), be jointly determined by the city or county having jurisdiction and that other public agency.

(d) This section does not apply to commercial or industrial subdivisions or to condominium projects or stock cooperatives that consist of the subdivision of airspace in an existing apartment building that is more than five years old when no new dwelling units are added.

(e) Common interest developments, as defined in Section 1351 of the Civil Code, shall be eligible to receive a credit, as determined by the legislative body, against the amount of land required to be dedicated, or the amount of the fee imposed, pursuant to this section, for the value of private open space within the development which is usable for active recreational uses.

(f) Park and recreation purposes shall include land and facilities for the activity of "recreational community gardening," which activity consists of the cultivation by persons other than, or in addition to, the owner of the land, of plant material not for sale.

(g) This section shall be known and may be cited as the Quimby Act.

66477.1.

(a) At the time the legislative body or the official designated pursuant to Section 66458 approves a final map, the legislative body or the designated official shall also accept, accept subject to improvement, or reject any offer of dedication. The clerk of the legislative body shall certify or state on the map the action by the legislative body or designated official.

(b) The legislative body of a county, or a county officer designated by the legislative body, may accept into the county road system, pursuant to Section 941 of the Streets and Highways Code, any road for which an offer of dedication has been accepted or accepted subject to improvements.

66477.2.

(a) If at the time the final map is approved, any streets, paths, alleys, public utility easements, rights-of-way for local transit facilities such as bus turnouts, benches, shelters, landing pads, and similar items, which

directly benefit the residents of a subdivision, or storm drainage easements are rejected, subject to Section 771.010 of the Code of Civil Procedure, the offer of dedication shall remain open and the legislative body may by resolution at any later date, and without further action by the subdivider, rescind its action and accept and open the streets, paths, alleys, rights-of-way for local transit facilities such as bus turnouts, benches, shelters, landing pads, and similar items, which directly benefit the residents of a subdivision, or storm drainage easements for public use, which acceptance shall be recorded in the office of the county recorder.

(b) In the case of any subdivision fronting upon the ocean coastline or bay shoreline, the offer of dedication of public access route or routes from public highways to land below the ordinary high watermark shall be accepted within three years after the approval of the final map; in the case of any subdivision fronting upon any public waterway, river, or stream, the offer of dedication of public access route or routes from public highways to the bank of the waterway, river, or stream and the public easement along a portion of the bank of the waterway, river, or stream shall be accepted within three years after the approval of the final map; in the case of any subdivision fronting upon any lake or reservoir which is owned in part or entirely by any public agency, including the state, the offer of dedication of public access route or routes from public highways to any water of the lake or reservoir shall be accepted within five years after the approval of the final map; all other offers of dedication may be accepted at any time.

(c) Offers of dedication which are covered by subdivision (a) may be terminated and abandoned in the same manner as prescribed for the summary vacation of streets by Part 3 (commencing with Section 8300) of Division 9 of the Streets and Highways Code.

(d) Offers of dedication which are not accepted within the time limits specified in subdivision (b) shall be deemed abandoned.

(e) Except as provided in Sections 66499.16, 66499.17, and 66499.18, if a resubdivision or reversion to acreage of the tract is subsequently filed for approval, any offer of dedication previously rejected shall be deemed to be terminated upon the approval of the map by the legislative body. The map shall contain a notation identifying the offer or offers of dedication deemed terminated by this subdivision.

66477.3. Acceptance of offers of dedication on a final map shall not be effective until the final map is filed in the office of the county recorder or a resolution of acceptance by the legislative body is filed in such office.

66477.5.

(a) The local agency to which property is dedicated in fee for public purposes, or for making public improvements or constructing public facilities, other than for open space, parks, or schools, shall record a certificate with the county recorder in the county in which the property is located. The certificate shall be attached to the map and shall contain all of the following information:

(1) The name and address of the subdivider dedicating the property.

(2) A legal description of the real property dedicated.

(3) A statement that the local agency shall reconvey the property to the subdivider if the local agency makes a determination pursuant to this section that the same public purpose for which the property was dedicated does not exist, or the property or any portion thereof is not needed for public utilities, as specified in subdivision (c).

(b) The subdivider may request that the local agency make the determination that the same public purpose for which the dedication was required still exists, after payment of a fee which shall not exceed the amount reasonably required to make the determination. The determination may be made by reference to a capital improvement plan as specified in Section 65403 or 66002, an applicable general or specific plan requirement, the subdivision map, or other public documents that identify the need for the dedication.

(c) If a local agency has determined that the same public purpose for which the dedication was required does not exist, it shall reconvey the property to the subdivider or the successor in interest, as specified in subdivision (a), except for all or any portion of the property that is required for that same public purpose or for public utilities.

(d) If a local agency decides to vacate, lease, sell, or otherwise dispose of the dedicated property the local agency shall give at least 60 days notice to the subdivider whose name appears on the certificate before vacating, leasing, selling, or otherwise disposing of the dedicated property. This notice is not required if the dedicated property will be used for the same public purpose for which it was dedicated.

(e) This section shall only apply to property required to be dedicated on or after January 1, 1990.

66478. Whether by request of a county board of education or otherwise, a city or county may adopt an ordinance requiring any subdivider who develops or completes the development of one or more subdivisions in one or more school districts maintaining an elementary school to dedicate to the school district, or districts, within which such subdivisions are to be located, such land as the local legislative body shall deem to be necessary for the purpose of constructing thereon such elementary schools as are necessary to assure the residents of the subdivision adequate public school service. In no case shall the local legislative body require the dedication of an amount of land which would make development of the remaining land held by the subdivider economically unfeasible or which would exceed the amount of land ordinarily allowed under the procedures of the State Allocation Board.

An ordinance adopted pursuant to this section shall not be applicable to a subdivider who has owned the land being subdivided for more than 10 years prior to the filing of the tentative maps in accordance with Article 2 (commencing with Section 66452) of Chapter 3 of this division. The requirement of dedication shall be imposed at the time of approval of the tentative map. If, within 30 days after the requirement of dedication is imposed by the city or county, the school district does not offer to enter into a binding commitment with the subdivider to accept the dedication, the requirement shall be automatically terminated. The required dedication may be made any time before, concurrently with, or up to 60 days after, the filing of the final map on any portion of the subdivision. The school district shall, in the event that it accepts the dedication, repay to the subdivider or his successors the original cost to the subdivider of the dedicated land, plus a sum equal to the total of the following amounts:

(a) The cost of any improvements to the dedicated land since acquisition by the subdivider.

(b) The taxes assessed against the dedicated land from the date of the school district's offer to enter into the binding commitment to accept the dedication.

(c) Any other costs incurred by the subdivider in maintenance of such dedicated land, including interest costs incurred on any loan covering such land.

If the land is not used by the school district, as a school site, within 10 years after dedication, the subdivider shall have the option to repurchase the property from the district for the amount paid therefor.

The school district to which the property is dedicated shall record a certificate with the county recorder in the county in which the property is located. The certificate shall contain the following information:

(1) The name and address of the subdivider dedicating the property.

(2) A legal description of the real property dedicated.

(3) A statement that the subdivider dedicating the property has an option to repurchase the property if it is not used by the school district as a school site within 10 years after dedication.

(4) Proof of the acceptance of the dedication by the school district and the date of the acceptance.

The certificate shall be recorded not more than 10 days after the date of acceptance of the dedication. The subdivider shall have the right to compel the school district to record such certificate, but until such certificate is recorded, any rights acquired by any third party dealing in good faith with the school district shall not be impaired or otherwise affected by the option right of the subdivider.

If any subdivider is aggrieved by, or fails to agree to the reasonableness of any requirement imposed pursuant to this section, he may bring a special proceeding in the superior court pursuant to Section 66499.37.

SCHOOL IMPACT FEE STATUTES

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CALIFORNIA EDUCATION CODE
TITLE 1. GENERAL EDUCATION CODE PROVISIONS
DIVISION 1. GENERAL EDUCATION CODE PROVISIONS
PART 10.5. SCHOOL FACILITIES
CHAPTER 6. DEVELOPMENT FEES, CHARGES, AND DEDICATIONS
SECTION 17620-17626

17620.

(a) (1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of commercial or industrial construction shall not be deemed to include the square footage of any structure existing on the site of that construction as of the date the first building permit is issued for any portion of that construction.

(B) To new residential construction.

(C) (i) Except as otherwise provided in clause (ii), to other residential construction, only if the resulting increase in assessable space exceeds 500 square feet. The calculation of the "resulting increase in assessable space" for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total resulting increase in assessable space.

(ii) This subparagraph does not authorize the imposition of a levy, charge, dedication, or other requirement against residential construction, regardless of the resulting increase in assessable space, if that construction qualifies for the exclusion set forth in subdivision (a) of Section 74.3 of the Revenue and Taxation Code.

(D) To location, installation, or occupancy of manufactured homes and mobilehomes, as defined in Section 17625.

(2) For purposes of this section, "construction" and "assessable space" have the same meanings as defined in Section 65995 of the Government Code.

(3) For purposes of this section and Section 65995 of the Government Code, "construction or reconstruction of school facilities" does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal\ of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 17582.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential construction within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that residential construction.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations

required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code, or in preparing the school facilities needs analysis described in Section 65995.6 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district. For purposes of this paragraph, "fees collected in that fiscal year pursuant to this section" does not include any amount in addition to the amounts specified in paragraphs (1) and (2) of subdivision (b) of Section 65995 of the Government Code.

(b) A city or county, whether general law or chartered, or the Office of Statewide Health Planning and Development shall not issue a building permit for any construction absent certification by the appropriate school district that any fee, charge, dedication, or other requirement levied by the governing board of that school district has been complied with, or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the construction. The school district shall issue the certification immediately upon compliance with the fee, charge, dedication, or other requirement.

(c) If, pursuant to subdivision (c) of Section 17621, the governing board specifies that the fee, charge, dedication, or other requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code, the restriction set forth in subdivision (b) of this section does not apply. In that event, however, a city or county, whether general law or chartered, shall not conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential construction absent certification by the appropriate school district of compliance by that residential construction with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city, county, or the Office of Statewide Health Planning and Development as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city, county, or the Office of Statewide Health Planning and Development of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 17621.

17621.

(a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 17620, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7 of the Government Code. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 17620 shall not be subject to the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district

governing board shall specify, pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 17620 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66020 of the Government Code, except that the procedures set forth in Section 66021 of the Government Code are deemed to apply, for this purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001 of the Government Code, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are calculated on either an individual project or categorical basis, in accordance with subparagraph (A). Those employee generation estimates shall be based upon commercial and industrial factors within the district or upon, in whole or in part, the applicable employee generation estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments.

(C) The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge, dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper.

17622.

(a) No fee, charge, dedication, or other requirement may be levied by any school district pursuant to Section 17620 upon any greenhouse or other space that is covered or enclosed for agricultural purposes, unless and until the district first complies with subdivisions (b) and (c).

(b) The school district governing board shall make a finding, supported by substantial evidence, of both of the following:

(1) The amount of the proposed fees or other requirements and the location of the land, if any, to be dedicated, bear a reasonable relationship and are limited to the needs of the community for elementary or high school facilities caused by the development.

(2) The amount of the proposed fees or other requirements does not exceed the estimated reasonable cost of providing for the construction or reconstruction of the school facilities necessitated by the development projects from which the fees or other requirements are to be collected.

(c) In determining the amount of the fees or other requirements, if any, to be levied on the development of any structure as described in subdivision (a), the school district governing board shall consider the relationship between the proposed increase in the number of employees, if any, the size and specific use of the structure, and the cost of the construction. No fee, charge, dedication, or other form of requirement, as

authorized under Section 17620, shall be applied to the development of any structure described in subdivision (a) where the governing board finds either that the number of employees is not increased as a result of that development, or that housing has been provided for those employees, to the extent of any increase, by their employer, against which housing a fee, charge, or dedication, or other form of requirement has been applied under Section 17620. In developing the finding described in this section, the governing board shall consult with the county agricultural commissioner or the county director of the cooperative extension service.

17623. In the event the fee authorized pursuant to Section 17620 is levied by two nonunified school districts having common territorial jurisdiction, in a total amount that exceeds the maximum fee authorized under Section 65995 of the Government Code, the fee revenue for the area of common jurisdiction shall be distributed in the following manner:

(a) The governing boards of the affected school districts shall enter into an agreement specifying the allocation of fee revenue and the duration of the agreement. A copy of that agreement shall be transmitted by each district to the State Allocation Board.

(b) In the event the affected school districts are unable to reach an agreement pursuant to subdivision (a), the districts shall jointly submit the dispute to a three-member arbitration panel composed of one representative chosen by each of the districts and one representative chosen jointly by both of the districts. The decision of the arbitration panel shall be final and binding upon both districts for a period of three years.

17624.

(a) Any school district that has imposed or, subsequent to the operative date of this section, imposes, any fee, charge, dedication, or other requirement under Section 17620 against any development project that subsequently meets the description set forth in subdivision (b), shall repay or reconvey, as appropriate, that fee, charge, dedication, or other requirement to the person or persons from whom that fee, charge, dedication, or other requirement was collected, less the amount of the administrative costs incurred in collecting and repaying the fee, charge, dedication, or other requirement.

(b) This section applies to any development project for which the building permit, including any extensions, expires on or after January 1, 1990, without the commencement of construction, as defined in subdivision (c) of Section 65995 of the Government Code.

17624.5. Any action brought in the superior court relating to this chapter may be subject to a mediation proceeding conducted pursuant to Chapter 9.3 (commencing with Section 66030) of Division 1 of Title 7 of the Government Code.

17625.

(a) Notwithstanding any other law, any fee, charge, dedication, or other form of requirement levied by the governing board of a school district under Section 17620 may apply, as to any manufactured home or mobilehome, only pursuant to compliance with all of the following conditions:

(1) The fee, charge, dedication, or other form of requirement is applied to the initial location, installation, or occupancy of the manufactured home or mobilehome within the school district.

(2) The manufactured home or mobilehome is to be located, installed, or occupied on a space or site on which no other manufactured home or mobilehome was previously located, installed, or occupied.

(3) The manufactured home or mobilehome is to be located, installed, or occupied on a space in a mobilehome park, or on any site or in any development outside a mobilehome park, on which the construction of the pad or foundation system commenced after September 1, 1986.

(b) Compliance on the part of any manufactured home or mobilehome with any fee, charge, dedication, or other form of requirement, as described in subdivision (a), or certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow, if the manufactured home or mobilehome is to be located, installed, or occupied on a mobilehome park space, or on any site or in any development outside a mobilehome park, as described in subdivision (a), and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehome for occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code, in the event that paragraph (1) does not apply.

(c) A fee or other requirement levied under Section 17620 shall not be applied to any of the following:

(1) Any manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park on or before September 1, 1986, or on any date thereafter, if construction on that space, pursuant to a building permit, commenced on or before September 1, 1986.

(2) Any manufactured home or mobilehome located, installed, or occupied on any site outside of a mobilehome park on or before September 1, 1986, or on any date thereafter if construction on that site pursuant to a building permit commenced on or before September 1, 1986.

(3) The replacement of, or addition to, a manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park, subsequent to the original location, installation, or occupancy of any manufactured home or mobilehome on that space.

(4) The replacement of a manufactured home or mobilehome that was destroyed or damaged by fire or any form of natural disaster.

(5) A manufactured home or mobilehome accessory structure, as defined in Section 18008.5 or 18213 of the Health and Safety Code.

(6) The conversion of a rental mobilehome park to a subdivision, cooperative, or condominium for mobilehomes, or its conversion to any other form of resident ownership of the park, as described in Section 50561 of the Health and Safety Code.

(d) If any fee or other requirement levied under Section 17620 is required as to any manufactured home or mobilehome that is subsequently replaced by a permanent residential structure constructed on the same lot, the amount of that fee or other requirement shall apply toward the payment of any fee or other requirement under Section 17620 applied to that permanent residential structure.

(e) Notwithstanding any other provision of law, any school district that, on or after January 1, 1987, collected any fee, charge, dedication, or other form of requirement from any manufactured home, mobilehome, mobilehome park, or other development, shall immediately repay the fee, charge, dedication, or other form of requirement to the person or persons who made the payment to the extent the fee, charge, dedication, or other form of requirement collected would not have been authorized under subdivision (a). This subdivision shall not apply, however, to the extent that, pursuant to Section 16 of Article I of the California Constitution, it would impair the obligation of any contract entered into by any school district, on or before January 1, 1998.

(f) For purposes of this section, "manufactured home," "mobilehome," and "mobilehome park" have the meanings set forth in Sections 18007, 18008, and 18214, respectively, of the Health and Safety Code.

(g) (1) Whenever a manufactured home or a mobilehome owned by a person 55 years of age or older who is also a member of a lower income household as defined by Section 50079.5 of the Health and Safety Code, and which has been moved from a mobilehome park space located in one school district, where the mobilehome owner has resided, to a space or lot located in a mobilehome park or a subdivision, cooperative, or condominium for mobilehomes or manufactured homes located in another school district, is subject to any fee or other requirement under Section 17620, this section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code, the district in which the manufactured home or mobilehome has been newly located may waive the fee or other requirement under Section 53080, this section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code, or otherwise shall be required to grant the homeowner the necessary approval for occupancy of the home, and permission to pay the amount of the fee or other requirement thereafter, in installments, over a period totaling no less than 36 months. A school district may require that the installments be paid monthly, quarterly, or every six months during the 36-month period, and that the fee be secured as a lien perfected against the mobilehome or manufactured home pursuant to Section 18080.7 of the Health and Safety Code.

(2) Costs of filing the lien and reasonable late charges or interest may be added to the amount of the lien. This subdivision does not apply if a school facilities fee, charge, or other requirement is imposed pursuant to Section 65995.2 of the Government Code.

17626.

(a) A fee, charge, dedication, or other requirement authorized under Section 17620, whether or not allowable under Chapter 6 (commencing with Section 66010) of Division 1 of Title 7 of the Government

Code, may not be applied to the reconstruction of any residential, commercial, or industrial structure that is damaged or destroyed as a result of a disaster, except to the extent the square footage of the reconstructed structure exceeds the square footage of= the structure that was damaged or destroyed. That square footage comparison shall be made, in the case of a commercial or industrial structure, on the basis of chargeable covered and enclosed space, as defined in Section 65995 of the Government Code, or, in the case of a residential structure, on the basis of assessable space, as defined in Section 65995 of the Government Code.

(b) The following definitions apply for the purposes of this section:

(1) "Disaster" means a fire, earthquake, landslide, mudslide, flood, tidal wave, or other unforeseen event that produces material damage or loss.

(2) "Reconstruction" means the construction of property that replaces, and is equivalent in kind to, the damaged or destroyed property.

SCHOOL IMPACT FEE STATUTES (Continued)

[downloaded January 8, 2005]

CALIFORNIA GOVERNMENT CODE
TITLE 7. PLANNING AND LAND USE
DIVISION 1. PLANNING AND ZONING
CHAPTER 4.9. PAYMENT OF FEES, CHARGES, DEDICATIONS, OR OTHER REQUIREMENTS AGAINST A DEVELOPMENT PROJECT..... 65995-65998

CHAPTER 4.9. PAYMENT OF FEES, CHARGES, DEDICATIONS, OR OTHER REQUIREMENTS AGAINST A DEVELOPMENT PROJECT

65995.

(a) Except for a fee, charge, dedication, or other requirement authorized under Section 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), a fee, charge, dedication, or other requirement for the construction or reconstruction of school facilities may not be levied or imposed in connection with, or made a condition of, any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073.

(b) Except as provided in Sections 65995.5 and 65995.7, the amount of any fees, charges, dedications, or other requirements authorized under Section 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, may not exceed the following:

(1) In the case of residential construction, including the location, installation, or occupancy of manufactured homes and mobilehomes, one dollar and ninety-three cents ($1.93) per square foot of assessable space. "Assessable space," for this purpose, means all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area. The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters. "Manufactured home" and "mobilehome" have the meanings set forth in subdivision (f) of Section 17625 of the Education Code. The application of any fee, charge, dedication, or other form of requirement to the location, installation, or occupancy of manufactured homes and mobilehomes is subject to Section 17625 of the Education Code.

(2) In the case of any commercial or industrial construction, thirty-one cents ($0.31) per square foot of chargeable covered and enclosed space. "Chargeable covered and enclosed space," for this purpose, means the covered and enclosed space determined to be within the perimeter of a commercial or industrial structure, not including any storage areas incidental to the principal use of the construction, garage, parking structure, unenclosed walkway, or utility or disposal area. The determination of the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure shall be made by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county. For the

determination of chargeable fees to be paid to the appropriate school district in connection with any commercial or industrial construction under the jurisdiction of the Office of Statewide Health Planning and Development, the architect of record shall determine the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be increased in 2000, and every two years thereafter, according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting, which increase shall be effective as of the date of that meeting.

(c) (1) Notwithstanding any other provision of law, during the term of a contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before January 1, 1987, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential construction, neither Section 17620 of the Education Code nor this chapter applies to that residential construction.

(2) Notwithstanding any other provision of state or local law, construction that is subject to a contract entered into between a person and a school district, city, county, or city and county, whether general law or chartered, after January 1, 1987, and before the operative date of the act that adds paragraph (3) that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of construction, may not be affected by the act that adds paragraph (3).

(3) Notwithstanding any other provision of state or local law, until January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, shall be required to comply with that condition.

Notwithstanding any other provision of state or local law, on and after January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, may not be subject to a fee, charge, dedication, or other requirement exceeding the amount specified in paragraphs (1) and (2) of subdivision (b), or, if a district has increased the limit specified in paragraph (1) of subdivision (b) pursuant to either Section 65995.5 or 65995.7, that increased amount.

(4) Any construction that is not subject to a contract as described in paragraph (2), or to paragraph (3), and that satisfies both of the requirements of this paragraph, may not be subject to any increased fee, charge, dedication, or other requirement authorized by the act that adds this paragraph beyond the amount specified in paragraphs (1) and (2) of subdivision (b).

(A) A tentative map, development permit, or conditional use permit was approved before the operative date of the act that amends this subdivision.

(B) A building permit is issued before January 1, 2000.

(d) For purposes of this chapter, "construction" means new construction and reconstruction of existing building for residential, commercial, or industrial. "Residential, commercial, or industrial construction" does not include any facility used exclusively for religious purposes that is thereby exempt from property taxation under the laws of this state, any facility used exclusively as a private full-time day school as described in Section 48222 of the Education Code, or any facility that is owned and occupied by one or more agencies of federal, state, or local government. In addition, "commercial or industrial construction" includes, but is not limited to, any hotel, inn, motel, tourist home, or other lodging for which the maximum term of occupancy for guests does not exceed 30 days, but does not include any residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code.

(e) The Legislature finds and declares that the financing of school facilities and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities are matters of statewide concern. For this reason, the Legislature hereby occupies the subject matter of requirements related to school facilities levied or imposed in connection with, or made a condition of, any

land use approval, whether legislative or adjudicative act, or both, and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities, to the exclusion of all other measures, financial or nonfinancial, on the subjects. For purposes of this subdivision, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(f) Nothing in this section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities. However, the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 may not be required as a condition of approval of any legislative or adjudicative act, or both, if the purpose of the community facilities district is to finance school facilities.

(g) (1) The refusal of a person to agree to undertake or cause to be undertaken an act relating to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5, including formation of, or annexation to, a community facilities district, voting to levy a special tax, or authorizing another to vote to levy a special tax, may not be a factor when considering the approval of a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, if the purpose of the community facilities district is to finance school facilities.

(2) If a person voluntarily elects to establish, or annex into, a community facilities district and levy a special tax approved by landowner vote to finance school facilities, the present value of the special tax specified in the resolution of formation shall be calculated as an amount per square foot of assessable space and that amount shall be a credit against any applicable fee, charge, dedication, or other requirement for the construction or reconstruction of school facilities. For purposes of this paragraph, the calculation of present value shall use the interest rate paid on the United States Treasury's 30-year bond on the date of the formation of, or annexation to, the community facilities district, as the capitalization rate.

(3) For purposes of subdivisions (f), (h), and (i), and this subdivision, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(h) The payment or satisfaction of a fee, charge, or other requirement levied or imposed pursuant to Section 17620 of the Education Code in the amount specified in Section 65995 and, if applicable, any amounts specified in Section 65995.5 or 65995.7 are hereby deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073, on the provision of adequate school facilities.

(i) A state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073 on the basis of a person's refusal to provide school facilities mitigation that exceeds the amounts authorized pursuant to this section or pursuant to Section 65995.5 or 65995.7, as applicable.

65995.1.

(a) Notwithstanding any other provision of law, as to any development project for the construction of senior citizen housing, as described in Section 51.3 of the Civil Code, a residential care facility for the elderly as described in subdivision (k) of Section 1569.2 of the Health and Safety Code, or a multilevel facility for the elderly as described in paragraph (9) of subdivision (d) of Section 15432, any fee, charge, dedication, or other form of requirement that is levied under Section 53080 may be applied only to new construction, and is subject to the limits and conditions applicable under subdivision (b) of Section 65995 in the case of commercial or industrial development.

(b) Notwithstanding any other provision of law, as to any development project for the construction of agricultural migrant worker housing financed in whole or part pursuant to Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 31 of the Health and Safety Code, no fees, charges, dedications, or other forms of requirements that are levied under Section 53080 shall be applied to new construction, reconstruction, or rehabilitation of this housing. The exemption provided by this subdivision shall be applicable only to that agricultural migrant worker housing which is owned by the state and which is subject

to a contract ensuring compliance with the requirements of Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 31 of the Health and Safety Code.

(c) Any development project against which school facilities fees or other requirements have been levied or waived in accordance with the limit or exemption set forth in subdivision (a) or (b) may be converted to any use other than those uses described in the statutes cited in that subdivision only with the approval of the city or county that issued the building permit for the project. That approval shall not be granted absent certification by the appropriate school district that payment has been made on the part of the development project at the rate of the school facilities fee, charge, dedication, or other form of requirement applied by the district under Section 53080 to residential development as of the date of conversion, less the amount of any school facilities fees or other requirements paid on the part of the project in accordance with the limits set forth in subdivision (a) or (b).

65995.2.

(a) Notwithstanding any other provision of law, the imposition of any fee, charge, dedication, or other requirement authorized under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, against any manufactured home or mobilehome that is located within a mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which residence islimited to older persons, as defined pursuant to the federal Fair Housing Amendments Act of 1988, is subject to the limits and conditions that are applicable under subdivision (b) of Section 65995 in the case of commercial and industrial development.

(b) Any mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which school facilities fees, charges, dedications, or other requirements have been imposed against one or more manufactured homes or mobilehomes in accordance with the limit set forth in subdivision (a) may subsequently choose to permit the residence of persons other than older persons, in which event it shall so notify the appropriate school district and city or county. As a condition of the first sale, subsequent to that notification, of each manufactured home or mobilehome in the mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, payment shall be made to the school district in the amount of the school facilities fee or other requirement applied by the district under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, to residential development as of the date of that sale, less the amount of any school facilities fees, charges, dedications, or other requirements imposed against that manufactured home or mobilehome in accordance with the limits described in subdivision (a). Any prospective purchaser of a manufactured home or mobilehome that is subject to the requirement set forth in this subdivision shall be given written notice of the existence of that requirement by the seller prior to entering into any contract for that purchase.

(c) Compliance on the part of any manufactured home or mobilehome with any additional fee or other requirement applied by the school district pursuant to subdivision (b), and certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow of the first sale of the manufactured home or mobilehome following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b) and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehomes for initial occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b), in the event that paragraph (1) does not apply.

65995.5.

(a) The governing board of a school district may impose the amount calculated pursuant to this section as an alternative to the amount that may be imposed on residential construction calculated pursuant to subdivision (b) of Section 65995.

(b) To be eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section, a governing board shall do all of the following:

(1) Make a timely application to the State Allocation Board for new construction funding for which it is eligible and be determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) and Article 3 (commencing with Section 17071.75) of Chapter 12.5 of Part 10 of the Education Code. A governing board that submits an application to determine the district's eligibility for new construction funding shall be deemed eligible if the State Allocation Board fails to notify the district of the district's eligibility within 120 days of receipt of the application.

(2) Conduct and adopt a school facility needs analysis pursuant to Section 65995.6.

(3) Until January 1, 2000, satisfy at least one of the requirements set forth in subparagraphs (A) to (D), inclusive, and on and after January 1, 2000, satisfy at least two of the requirements set forth in subparagraphs (A) to (D), inclusive:

(A) The district is a unified or elementary school district that has a substantial enrollment of its elementary school pupils on a multitrack year-round schedule. "Substantial enrollment" for purposes of this paragraph means at least 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, in the high school attendance area in which all or some of the new residential units identified in the needs analysis are planned for construction. A high school district shall be deemed to have met the requirements of this paragraph if either of the following apply:

(i) At least 30 percent of the high school district's pupils are on a multitrack year-round schedule.

(ii) At least 40 percent of the pupils enrolled in public schools in kindergarten and grades 1 to 12, inclusive, within the boundaries of the high school attendance area for which the school district is applying for new facilities are enrolled in multitrack year-round schools.

(B) The district has placed on the ballot in the previous four years a local general obligation bond to finance school facilities and the measure received at least 50 percent plus one of the votes cast.

(C) The district meets one of the following:

(i) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 15 percent of the district' s local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners prior to November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(ii) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 30 percent of the district' s local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners after November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for

the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(D) At least 20 percent of the teaching stations within the district are relocatable classrooms.

(c) The maximum square foot fee, charge, dedication, or other requirement authorized by this section that may be collected in accordance with Chapter 6 (commencing with Section 17620) of Part 10.5 of the Education Code shall be calculated by a governing board of a school district, as follows:

(1) The number of unhoused pupils identified in the school facilities needs analysis shall be multiplied by the appropriate amounts provided in subdivision (a) of Section 17072.10. This sum shall be added to the site acquisition and development cost determined pursuant to subdivision (h).

(2) The full amount of local funds the governing board has dedicated to facilities necessitated by new construction shall be subtracted from the amount determined pursuant to paragraph (1). Local funds include fees, charges, dedications, or other requirements imposed on commercial or industrial construction.

(3) The resulting amount determined pursuant to paragraph (2) shall be divided by the projected total square footage of assessable space of residential units anticipated to be constructed during the next five-year period in the school district or the city and county in which the school district is located. The estimate of the projected total square footage shall be based on information available from the city or county within which the residential units are anticipated to be constructed or a market report prepared by an independent third party.

(d) A school district that has a common territorial jurisdiction with a district that imposes the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7, may not impose a fee, charge, dedication, or other requirement on residential construction that exceeds the limit set forth in subdivision (b) of Section 65995 less the portion of that amount it would be required to share pursuant to Section 17623 of the Education Code, unless that district is eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7.

(e) Nothing in this section is intended to limit or discourage the joint use of school facilities or to limit the ability of a school district to construct school facilities that exceed the amount of funds authorized by Section 17620 of the Education Code and provided by the state grant program, if the additional costs are funded solely by local revenue sources other than fees, charges, dedications, or other requirements imposed on new construction.

(f) Except as provided in paragraph (5) of subdivision (a) of Section 17620 of the Education Code, a fee, charge, dedication, or other requirement authorized under this section and Section 65995.7 shall be expended solely on the school facilities identified in the needs analysis as being attributable to projected enrollment growth from the construction of new residential units. This subdivision does not preclude the expenditure of a fee, charge, dedication, or other requirement, authorized pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 17620, on school facilities identified in the needs analysis as necessary due to projected enrollment growth attributable to the new residential units.

(g) "Residential units" and "residences" as used in this section and in Sections 65995.6 and 65995.7 means the development of single-family detached housing units, single-family attached housing units, manufactured homes and mobilehomes, as defined in subdivision (f) of Section 17625 of the Education Code, condominiums, and multifamily housing units, including apartments, residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, and stock cooperatives, as defined in Section 1351 of the Civil Code.

(h) Site acquisition costs shall not exceed half of the amount determined by multiplying the land acreage determined to be necessary under the guidelines of the State Department of Education, as published in the "School Site Analysis and Development Handbook," as that handbook read as of January 1, 1998, by the estimated cost determined pursuant to Section 17072.12 of the Education Code. Site development costs shall not exceed the estimated amount that would be funded by the State Allocation Board pursuant to its regulations governing grants for site development costs.

65995.6.

(a) The school facilities needs analysis required by paragraph (2) of subdivision (b) of Section 65995.5 shall be conducted by the governing board of a school district to determine the need for new school facilities for

unhoused pupils that are attributable to projected enrollment growth from the development of new residential units over the next five years. The school facilities needs analysis shall project the number of unhoused elementary, middle, and high school pupils generated by new residential units, in each category of pupils enrolled in the district. This projection of unhoused pupils shall be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those anticipated to be constructed either in the school district or the city or county in which the school district is located, and relevant planning agency information, such as multiphased development projects, that may modify the historical figures. For purposes of this paragraph, "type" means a single family detached, single family attached, or multifamily unit. The existing school building capacity shall be calculated pursuant to Article 2 (commencing with Section 17071.10) of Chapter 12.5 of Part 10 of the Education Code. The existing school building capacity shall be recalculated by the school district as part of any revision of the needs analysis pursuant to subdivision (e) of this section. If a district meets the requirements of paragraph (3) of subdivision (b) of Section 65995.5 by having a substantial enrollment on a multitrack year-round schedule, the determination of whether the district has school building capacity area shall reflect the additional capacity created by the multitrack year-round schedule.

(b) When determining the funds necessary to meet its facility needs, the governing board shall do each of the following:

(1) Identify and consider any surplus property owned by the district that can be used as a schoolsite or that is available for sale to finance school facilities.

(2) Identify and consider the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities.

(3) Identify and consider local sources other than fees, charges, dedications, or other requirements imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units.

(c) The governing board shall adopt the school facility needs analysis by resolution at a public hearing. The school facilities needs analysis may not be adopted until the school facilities needs analysis in its final form has been made available to the public for a period of not less than 30 days during which time the school facilities needs analysis shall be provided to the local agency responsible for land use planning for its review and comment. Prior to the adoption of the school facilities needs analysis, the public shall have the opportunity to review and comment on the school facilities needs analysis and the governing board shall respond to written comments it receives regarding the school facilities needs analysis.

(d) Notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed school facilities needs analysis and any proposed revision of the school facilities needs analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the school district that is conducting the hearing no less than 30 days prior to the hearing. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous public places within the jurisdiction of the school district not less than 30 days prior to the hearing. In addition to these notice requirements, the governing board shall mail a copy of the school facilities needs analysis and any proposed revision to the school facilities needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The governing board may charge a fee reasonably related to the cost of providing these materials to those persons who request the school facilities needs analysis or revision.

(e) The school facilities needs analysis may be revised at any time in the same manner, and the revision is subject to the same conditions and requirements, applicable to the adoption of the school facilities needs analysis.

(f) A fee, charge, dedication, or other requirement in an amount authorized by this section or Section 65995.7, shall be adopted by a resolution of the governing board as part of the adoption or revision of the school facilities needs analysis and may not be effective for more than one year. Notwithstanding subdivision (a) of Section 17621 of the Education Code, or any other provision of law, the fee, charge, dedication, or other requirement authorized by the resolution shall take effect immediately after the adoption of the resolution.

(g) Division 13 (commencing with Section 21000) of the Public Resources Code may not apply to the preparation, adoption, or update of the school facilities needs analysis, or adoption of the resolution specified in this section.

(h) Notice and hearing requirements other than those provided in this section may not be applicable to the adoption or revision of a school facilities needs analysis or the resolutions adopted pursuant to this section.

65995.7.

(a) (1) If state funds for new school facility construction are not available, the governing board of a school district that complies with Section 65995.5 may increase the alternative fee, charge, dedication, or other requirement calculated pursuant to subdivision (c) of Section 65995.5 by an amount that may not exceed the amount calculated pursuant to subdivision (c) of Section 65995.5, except that for the purposes of calculating this additional amount, the amount identified in paragraph (2) of subdivision (c) of Section 65995.5 may not be subtracted from the amount determined pursuant to paragraph (1) of subdivision (c) of Section 65995.5. For purposes of this section, state funds are not available if the State Allocation Board is no longer approving apportionments for new construction pursuant to Article 5 (commencing with Section 17072.20) of Chapter 12.5 of Part 10 of the Education Code due to a lack of funds available for new construction. Upon making a determination that state funds are no longer available, the State Allocation Board shall notify the Secretary of the Senate and the Chief Clerk of the Assembly, in writing, of that determination and the date when state funds are no longer available for publication in the respective journal of each house. For the purposes of making this determination, the board shall not consider whether funds are available for, or whether it is making preliminary apportionments or final apportionments pursuant to, Article 11 (commencing with Section 17078.10).

(2) Paragraph (1) shall become inoperative commencing on the effective date of the measure that amended this section to add this paragraph, and shall remain inoperative through the earlier of either of the following:

(A) November 5, 2002, if the voters reject the Kindergarten University Public Education Facilities Bond Act of 2002, after which date paragraph (1) shall again become operative.

(B) The date of the 2004 direct primary election after which date paragraph (1) shall again become operative.

(b) A governing board may offer a reimbursement election to the person subject to the fee, charge, dedication, or other requirement that provides the person with the right to monetary reimbursement of the supplemental amount authorized by this section, to the extent that the district receives funds from state sources for construction of the facilities for which that amount was required, less any amount expended by the district for interim housing. At the option of the person subject to the fee, charge, dedication, or other requirement the reimbursement election may be made on a tract or lot basis. Reimbursement of available funds shall be made within 30 days as they are received by the district.

(c) A governing board may offer the person subject to the fee, charge, dedication, or other requirement an opportunity to negotiate an alternative reimbursement agreement if the terms of the agreement are mutually agreed upon.

(d) A governing board may provide that the rights granted by the reimbursement election or the alternative reimbursement agreement are assignable.

65996.

(a) Notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code, or any other provision of state or local law, the following provisions shall be the exclusive methods of considering and mitigating impacts on school facilities that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property or any change of governmental organization or reorganization, as defined in Section 56021 or 56073:

(1) Section 17620 of the Education Code.

(2) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7.

(b) The provisions of this chapter are hereby deemed to provide full and complete school facilities mitigation and, notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code, or any other provision of state or local law, a state or local agency may not deny or

refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, on the basis that school facilities are inadequate.

(c) For purposes of this section, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(d) Nothing in this chapter shall be interpreted to limit or prohibit the ability of a local agency to utilize other methods to provide school facilities if these methods are not levied or imposed in connection with, or made a condition of, a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or a change in governmental organization or reorganization, as defined in Section 56021 or 56073. Nothing in this chapter shall be interpreted to limit or prohibit the assessment or reassessment of property in conjunction with ad valorum taxes, or the placement of a parcel on the secured roll in conjunction with qualified special taxes as that term is used in Section 50079.

(e) Nothing in this section shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of land use approvals other than on the need for school facilities, as defined in this section.

(f) This section shall become inoperative during any time that Section 65997 is operative and this section shall become operative at any time that Section 65997 is inoperative.

65997.

(a) The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section 17620 of the Education Code, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(1) Chapter 12 (commencing with Section 17000) of, or Chapter 12.5 (commencing with Section 17070.10) of, Part 10 of the Education Code.

(2) Chapter 14 (commencing with Section 17085) of Part 10 of the Education Code.

(3) Chapter 18 (commencing with Section 17170) of Part 10 of the Education Code.

(4) Article 2.5 (commencing with Section 17430) of Chapter 4 of Part 10.5 of the Education Code.

(5) Section 17620 of the Education Code.

(6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5.

(7) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7.

(b) A public agency may not, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities.

(c) (1) This section shall become operative on or after any statewide election in 2012, if a statewide general obligation bond measure submitted for voter approval in 2012 or thereafter that includes bond issuance authority to fund construction of kindergarten and grades 1 to 12, inclusive, public school facilities is submitted to the voters and fails to be approved.

(2) (A) This section shall become inoperative if subsequent to the failure of a general obligation bond measure described in paragraph (1) a statewide general bond measure as described in paragraph (1) is approved by the voters.

(B) Thereafter, this section shall become operative if a statewide general obligation bond measure submitted for voter approval that includes bond issuance authority to fund construction of kindergarten and grades 1 to 12, inclusive, public school facilities is submitted to the voters and fails to be approved and shall become inoperative if subsequent to the failure of the general obligation bond measure a statewide bond measure as described in this subparagraph is approved by the voters.

(d) Notwithstanding any other provision of law, a public agency may deny or refuse to approve a legislative act involving, but not limited to, the planning, use, or development of real property, on the basis that school facilities are inadequate, except that a public agency may not require the payment or satisfaction of a fee, charge, dedication, or other financial requirement in excess of that levied or imposed pursuant to Section 65995 and, if applicable, any amounts specified in Sections 65995.5 or 65995.7.

65998.

(a) Nothing in this chapter or in Section 17620 of the Education Code shall be interpreted to limit or prohibit the authority of a local agency to reserve or designate real property for a schoolsite.

(b) Nothing in this chapter or in Section 17620 of the Education Code shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of a land use approval involving, but not limited to, the planning, use, or development of real property other than on the need for school facilities.

Colorado Impact Fee Act

[downloaded 9/20/2020]

Summarized History for Bill Number SB01S2-015
(The date the bill passed to the committee of the whole reflects the date the bill passed out of committee.)

09/20/2001 Introduced In Senate - Assigned to Public Policy and Planning
09/24/2001 Senate Committee on Public Policy and Planning Lay Over Unamended
10/01/2001 Senate Committee on Public Policy and Planning Pass Amended to Senate Committee of the Whole
10/03/2001 Senate Second Reading Passed with Amendments
10/04/2001 Introduced In House - Assigned to Business Affairs & Labor
10/04/2001 House Committee on Business Affairs & Labor Pass Unamended to House Committee of the Whole
10/04/2001 Senate Third Reading Passed
10/05/2001 House Third Reading Passed
10/08/2001 House Second Reading Special Order - Passed
10/15/2001 Signed by the President of the Senate
10/18/2001 Signed by the Speaker of the House
10/18/2001 Sent to the Governor
11/06/2001 Governor Signed

Title 29: Government - Local
Article 20: Local government Regulation of Land Use
Part 1: Local government Land Use Control Enabling Act

29-20-101. Short title.

This article shall be known and may be cited as the "Local Government Land Use Control Enabling Act of 1974".

29-20-102. Legislative declaration.

(1) The general assembly hereby finds and declares that in order to provide for planned and orderly development within Colorado and a balancing of basic human needs of a changing population with legitimate environmental concerns, the policy of this state is to clarify and provide broad authority to local governments to plan for and regulate the use of land within their respective jurisdictions. Nothing in this article shall serve to diminish the planning functions of the state or the duties of the division of planning.

(2) The general assembly further finds and declares that local governments will be better able to properly plan for growth and serve new residents if they are authorized to impose impact fees as a condition of approval of development permits. However, impact fees and other development charges can affect growth and development patterns outside a local government's jurisdiction, and uniform impact fee authority among local governments will encourage proper growth management.

29-20-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Development permit" means any preliminary or final approval of an application for rezoning, planned unit development, conditional or special use permit, subdivision, development or site plan, or similar

application for new construction; except that, for purposes of part 3 of this article, "development permit" is limited to an application regarding a specific project that includes new water use in an amount more than that used by fifty single-family equivalents, or fewer as determined by the local government..

(1.3) "Fire and emergency services provider" means a fire protection district organized under article 1 of title 32, C.R.S., or a fire authority established pursuant to section 29-1-203 .5.

(1.5) "Local government" means a county, home rule or statutory city, town, territorial charter city, or city and county.

(2) "Power authority" means an authority created pursuant to section 29-1-204.

29-20-104. Powers of local governments.

(1) Except as expressly provided in section 29-20-104.5, the power and authority granted by this section shall not limit any power or authority presently exercised or previously granted. Each local government within its respective jurisdiction has the authority to plan for and regulate the use of land by:

(a) Regulating development and activities in hazardous areas;

(b) Protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species;

(c) Preserving areas of historical and archaeological importance;

(d) Regulating, with respect to the establishment of, roads on public lands administered by the federal government; this authority includes authority to prohibit, set conditions for, or require a permit for the establishment of any road authorized under the general right-of-way granted to the public by 43 U.S.C. 932 (R.S. 2477) but does not include authority to prohibit, set conditions for, or require a permit for the establishment of any road authorized for mining claim purposes by 30 U.S.C. 21 et seq., or under any specific permit or lease granted by the federal government;

(e) Regulating the location of activities and developments which may result in significant changes in population density;

(f) Providing for phased development of services and facilities;

(g) Regulating the use of land on the basis of the impact thereof on the community or surrounding areas; and

(h) Regulating the surface impacts of oil and gas operations in a reasonable manner to address matters specified in this subsection (1)(h) and to protect and minimize adverse impacts to public health, safety, and welfare and the environment. Nothing in this subsection (1)(h) is intended to alter, expand, or diminish the authority of local governments to regulate air quality under section 25-7-128. For purposes of this subsection (1)(h), "minimize adverse impacts" means, to the extent necessary and reasonable, to protect public health, safety, and welfare and the environment by avoiding adverse impacts from oil and gas operations and minimizing and mitigating the extent and severity of those impacts that cannot be avoided. The following matters are covered by this subsection (1)(h):

(I) Land use;
(II) The location and siting of oil and gas facilities and oil and gas locations, as those terms are defined in section 34-60-103 (6.2) and (6.4);
(III) Impacts to public facilities and services;

(IV) Water quality and source, noise, vibration, odor, light, dust, air emissions and air quality, land disturbance, reclamation procedures, cultural resources, emergency preparedness and coordination with first responders, security, and traffic and transportation impacts;
(V) Financial securities, indemnification, and insurance as appropriate to ensure compliance with the regulations of the local government; and
(VI) All other nuisance-type effects of oil and gas development; and

(i) Otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights.

(2) To implement the powers and authority granted in subsection (1)(h) of this section, a local government within its respective jurisdiction has the authority to:

(a) Inspect all facilities subject to local government regulation;
(b) Impose fines for leaks, spills, and emissions; and
(c) Impose fees on operators or owners to cover the reasonably foreseeable direct and indirect costs of permitting and regulation and the costs of any monitoring and inspection program necessary to address the impacts of development and to enforce local governmental requirements.

(3) (a) To provide a local government with technical expertise regarding whether a preliminary or final determination of the location of an oil and gas facility or oil and gas location within its respective jurisdiction could affect oil and gas resource recovery:

(I) Once an operator, as defined in section 34-60-103 (6.8), files an application for the location and siting of an oil and gas facility or oil and gas location and the local government has made either a preliminary or final determination regarding the application, the local government having land use jurisdiction may ask the director of the oil and gas conservation commission pursuant to section 34-60-104.5 (3) to appoint a technical review board to conduct a technical review of the preliminary or final determination and issue a report that contains the board's conclusions.
(II) Once a local government has made a final determination regarding an application specified in subsection (3)(a)(I) of this section or if the local government has not made a final determination on an application within two hundred ten days after filing by the operator, the operator may ask the director of the oil and gas conservation commission pursuant to section 34-60-104.5 (3) to appoint a technical review board to conduct a technical review of the final determination and issue a report that contains the board's conclusions.
(b) A local government may finalize its preliminary determination without any changes based on the technical review report, finalize its preliminary determination with changes based on the report, or reconsider or do nothing with regard to its already finalized determination.

(c) If an applicant or local government requests a technical review pursuant to subsection (3)(a) of this section, the period to appeal a local government's determination pursuant to rule 106 (a)(4) of the Colorado rules of civil procedure is tolled until the report specified in subsection (3)(a) of this section has been issued, and the applicant is afforded the full period to appeal thereafter.

29-20-104.5. Impact fees - Definition.

(1) Pursuant to the authority granted in section 29-20-104 (1) (g) and as a condition of issuance of a development permit, a local government may impose an impact fee or other similar development charge to fund expenditures by such local government *or a fire and emergency services provider that provides fire protection, rescue, and emergency services in the new development* on capital facilities needed to serve new development. No impact fee or other similar development charge shall be imposed except pursuant to a schedule that is:

(a) Legislatively adopted;
(b) Generally applicable to a broad class of property; and
(c) Intended to defray the projected impacts on capital facilities caused by proposed development.

(2) *(a)* A local government shall quantify the reasonable impacts of proposed development on existing capital facilities and establish the impact fee or development charge at a level no greater than necessary to defray such impacts directly related to proposed development. No impact fee or other similar development charge shall be imposed to remedy any deficiency in capital facilities that exists without regard to the proposed development.

(b) a local government shall confer with any fire and emergency services provider that provides fire protection, rescue, and emergency medical services in a new development, together with the owner or developer of the development, to assess and determine whether there should be an impact fee or other similar development charge imposed to defray the impacts to the fire and emergency services provider.

(c) if a local government, in its sole discretion, elects to impose an impact fee or other similar development charge to fund the expenditures by a fire and emergency services provider for a
capital facility, then the local government and fire and emergency services provider shall enter into an intergovernmental agreement defining the impact fee or other similar development charge and the details of collection and remittance.

(d) a local government that imposes an impact fee or other similar development charge to fund the expenditures by a fire and emergency services provider for a capital facility shall pay the impact fees or other similar development charges collected to the fire protection and emergency service provider.

(3) Any schedule of impact fees or other similar development charges adopted by a local government pursuant to this section shall include provisions to ensure that no individual landowner is required to provide any site specific dedication or improvement to meet the same need for capital facilities for which the impact fee or other similar development charge is imposed. *A local government shall not impose an impact fee or other similar development charge on an individual landowner to fund expenditures for a capital facility used to provide fire, rescue, and emergency services if the landowner is already required to pay an impact fee or other similar development charge for another capital facility used to provide a similar fire, rescue, and emergency service or if the landowner has voluntarily contributed money for such a capital facility.*

(4) As used in this section, the term "capital facility" means any improvement or facility that:

(a) Is directly related to any service that a local government is authorized to provide;

(b) Has an estimated useful life of five years or longer; and

(c) Is required by the charter or general policy of a local government pursuant to a resolution or ordinance.

(5) Any impact fee or other similar development charge shall be collected and accounted for in accordance with part 8 of article 1 of this title. Notwithstanding the provisions of this section, a local government may waive an impact fee or other similar development charge on the development of low- or moderate- income housing or affordable employee housing as defined by the local government.

(6) No impact fee or other similar development charge shall be imposed on any development permit for which the applicant submitted a complete application before the adoption of a schedule of impact fees or other similar development charges by the local government pursuant to this section. No impact fee or other similar development charge imposed on any development activity shall be collected before the issuance of the development permit for such development activity. Nothing in this section shall be construed to prohibit a local government from deferring collection of an impact fee or other similar development charge until the issuance of a building permit or certificate of occupancy.

(7) Any person or entity that owns or has an interest in land that is or becomes subject to a schedule of fees or charges enacted pursuant to this section shall, by filing an application for a development permit, have standing to file an action for declaratory judgment to determine whether such schedule complies with the provisions of this section. An applicant for a development permit who believes that a local government has improperly applied a schedule of fees or charges adopted pursuant to this section to the development application may pay the fee or charge imposed and proceed with development without prejudice to the applicant's right to challenge the fee or charge imposed under rule 106 of the Colorado rules of civil procedure. If the court determines that a local government has either imposed a fee or charge on a development that is not subject to the legislatively enacted schedule or improperly calculated the fee or charge due, it may enter judgment in favor of the applicant for the amount of any fee or charge wrongly collected with interest thereon from the date collected.

(8) (a) The general assembly hereby finds and declares that the matters addressed in this section are matters of statewide concern.

(b) This section shall not prohibit any local government from imposing impact fees or other similar development charges pursuant to a schedule that was legislatively adopted before October 1, 2001, so long as the local government complies with subsections (3), (5), (6), and (7) of this section. Any amendment of such schedule adopted after October 1, 2001, shall comply with all of the requirements of this section.

(9) If any provision of this section is held invalid, such invalidity shall invalidate this section in its entirety, and to this end the provisions of this section are declared to be nonseverable.

CONDITIONS ON LAND USE APPROVALS

29-20-201. Legislative declaration.

(1) The general assembly hereby finds, determines, and declares that:

(a) The right to own and use private property is a fundamental right, essential to the continued vitality of a democratic society;

(b) Governmental regulation of conduct, while equally essential to public order and the preservation of universally held values, must be carried out in a manner that appropriately balances the needs of the public with the rights and legitimate expectations of the individual; and

(c) This part 2 appropriately and necessarily underscores and reinvigorates the federal constitutional prohibition against taking private property for public use without just compensation and the state constitutional prohibitions against taking or damaging private property for public or private use.

(2) The general assembly further finds and declares that an individual private property owner should not be required, under the guise of police power regulation of the use and development of property, to bear burdens for the public good that should more properly be borne by the public at large.

(3) The general assembly intends, through the adoption of section 29-20-203, to codify certain constitutionally-based standards that have been established and applied by the courts. The fair, consistent, and expeditious adjudication of disputes over land use in state courts in accordance with constitutional standards is a matter of statewide concern.

29-20-202. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Land-use approval" means any final action of a local government that has the effect of authorizing the use or development of a particular parcel of real property.

(2) "Local government" has the same meaning as set forth in section 29-20-103 (1.5).

29-20-203. Conditions on land-use approvals.

(1) In imposing conditions upon the granting of land-use approvals, no local government shall require an owner of private property to dedicate real property to the public, or pay money or provide services to a public entity in an amount that is determined on an individual and discretionary basis, unless there is an essential nexus between the dedication or payment and a legitimate local government interest, and the dedication or payment is roughly proportional both in nature and extent to the impact of the proposed use or development of such property. This section shall not apply to any legislatively formulated assessment, fee, or charge that is imposed on a broad class of property owners by a local government.

(2) No local government shall impose any discretionary condition upon a land-use approval unless the condition is based upon duly adopted standards that are sufficiently specific to ensure that the condition is imposed in a rational and consistent manner.

29-20-204. Remedy for enforcement against a private property owner.

(1) (a) Within thirty days after the date of a decision or action of a local government imposing a condition in granting a land-use approval, the owner of such property may notify the local government in writing of an alleged violation of section 29-20-203.

(b) Upon the filing of such written notice, the local government shall inform each member of the governing body in writing that the notice has been filed. The local government shall respond to such notice within thirty days after the date of such notice by informing the property owner whether such application or enforcement will proceed as proposed, will be modified, or will be discontinued. The filing of such notice shall be a condition precedent to the owner's right to proceed under subsection (2) of this section.

(2) (a) Within sixty days after the date the local government is required to respond under paragraph (b) of subsection (1) of this section, the property owner may file a petition in the district court for the judicial district in which the subject property is located seeking relief from the enforcement or application of the local law, regulation, policy, or requirement on the basis of an alleged violation of section 29-20-203. Failure to file such a petition within said sixty-day period shall bar relief under this section.

(b) (I) Within thirty days after service on the local government of a petition pursuant to paragraph (a) of this subsection (2), the local government shall assemble and file with the clerk of the district court all documents in its possession concerning the enforcement or application of the local law, regulation, policy, or requirement, including the record of any hearing or proceeding concerning such enforcement or application. If there are no contested factual issues and if the court determines that the facts as reflected by the documents and record filed are sufficient to determine the case, the court shall proceed to determine the case in the most expeditious manner and shall issue appropriate procedural orders to facilitate such determination.

(II) If there are contested issues of fact, or if the court determines that additional evidence is necessary to determine the case, the court may order the parties to provide such additional facts and information as the court may deem appropriate. The court shall order a hearing as soon as its docket permits to resolve such issues of fact or hear such additional evidence.

(c) When it has been established that a required dedication of real property or payment of money as described in section 29-20-203 (1) has been or will be imposed, the burden shall be upon the local government to establish, based upon substantial evidence appearing in the record, that such dedication or payment is roughly proportional to the impact of the proposed use of the subject property.

(d) In determining whether the property owner should be granted relief from the local government's enforcement or application of the local law, regulation, policy, or requirement, the court shall include the following considerations:

(I) Whether such enforcement or application has been accomplished pursuant to a duly adopted law, regulation, policy, or requirement;

(II) Whether such enforcement or application advances a legitimate local government interest;

(III) Whether any required dedication of real property or payment of money as described in section 29-20-203 (1) required by such enforcement or application is roughly proportional to the impact of the proposed use of the subject property;

(IV) Whether there are adequate legislative standards and criteria to ensure that the local law, regulation, policy, or requirement is rationally and consistently applied.

(e) (I) If the court determines that local government enforcement or application of the local law, regulation, policy, or requirement to a specific parcel does not comply with section 29-20-203, the court shall grant appropriate relief to the property owner under the facts presented. Such relief may include, but shall not be limited to, ordering the local government to modify any required dedication of real property or payment of money as described in section 29-20-203 (1) to make it roughly proportional to the impact of the proposed use of the subject property in a manner consistent with the court's order.

(II) If the court determines that such enforcement or application is not based on a duly adopted law, regulation, policy, or requirement or that there are not adequate standards and criteria to ensure that such enforcement or application is rational and consistent, the court shall invalidate the enforcement or application of the law, regulation, policy, or requirement as applied to the subject property.

(f) In any proceeding under this subsection (2), the court may in its discretion award the prevailing party its costs and reasonable attorney fees.

(3) Nothing in this section shall affect:

(a) The ability to bring an action under any state statute relating to eminent domain or the exercise of eminent domain powers by the state or any local governmental entity in furtherance of section 15 of article II of the state constitution, nor shall these provisions limit any claim for compensation or other relief under any other provision of law prohibiting the taking or damaging of private property for public or private use.

(b) The right of an owner of private property to file an action for judicial review under rule 106 (a) (4) of the Colorado rules of civil procedure; except that, if a claim under this section is not included in such rule 106 (a) (4) action, it may be brought, if at all, only by amendment to the complaint in the rule 106 (a) (4) action. If the local government has answered the rule 106 (a) (4) complaint, the court may not deny amendment of the complaint to add a claim under this section unless the time requirements of paragraph (a) of subsection (2) of this section have not been met.

(4) An owner may proceed with development without prejudice to that owner's right to pursue the remedy provided by this section.

29-20-205. Limitation - scope of part

Nothing in this part 2 shall be construed to affect the expressly granted land-use authority of any local government.

IMPACT FEE EARMARKING REQUIREMENTS

PART 8
LAND DEVELOPMENT CHARGES

29-1-801. Legislative declaration.

The general assembly hereby finds and determines that statewide standards governing accountability for land development charges imposed by local governments to finance capital facilities and services are necessary and desirable to ensure reasonable certainty, stability, and fairness in the use to which moneys generated by such charges are put and to promote public confidence in local government finance. The general assembly therefore declares that this part 8 is a matter of statewide concern.

29-1-802. Definitions.

As used in this part 8, unless the context otherwise requires:

(1) "Capital expenditure" means any expenditure for an improvement, facility, or piece of equipment necessitated by land development which is directly related to a local government service, has an estimated useful life of five years or longer, and is required by charter or general policy of a local government pursuant to resolution or ordinance.

(2) "Land development" means any of the following:

(a) The subdivision of land;

(b) Construction, reconstruction, redevelopment, or conversion of use of land or any structural alteration, relocation, or enlargement which results in an increase in the number of service units required; or

(c) An extension of use or a new use of land which results in an increase in the number of service units required.

(3) "Land development charge" means any fee, charge, or assessment relating to a capital expenditure which is imposed on land development as a condition of approval of such land development, as a prerequisite to obtaining a permit or service. Nothing in this section shall be construed to include sales and use taxes, building or plan review fees, building permit fees, consulting or other professional review charges, or any other regulatory or administrative fee, charge, or assessment.

(4) "Local government" means a county, city and county, municipality, service authority, school district, local improvement district, law enforcement district, water, sanitation, fire protection, metropolitan, irrigation,

drainage, or other special district, any other kind of municipal, quasi-municipal, or public corporation, or any agency or instrumentality thereof organized pursuant to law.

(5) "Service unit" means a standard unit of measure of consumption, use, generation, or discharge of the services provided by a local government.

29-1-803. Deposit of land development charge.

(1) All moneys from land development charges collected, including any such moneys collected but not expended prior to January 1, 1991, shall be deposited or, if collected for another local government, transmitted for deposit, in an interest-bearing account which clearly identifies the category, account, or fund of capital expenditure for which such charge was imposed. Each such category, account, or fund shall be accounted for separately. The determination as to whether the accounting requirement shall be by category, account, or fund and by aggregate or individual land development shall be within the discretion of the local government. Any interest or other income earned on moneys deposited in said interest-bearing account shall be credited to the account. At least once annually, the local government shall publish on its official website, if any, in a clear, concise, and user-friendly format information detailing the allocation by dollar amount of each land development charge collected to an account or among accounts, the average annual interest rate on each account, and the total amount disbursed from each account, during the local government's most recent fiscal year.

29-1-804. Exceptions - state-mandated charges.

This part 8 shall not apply to rates, fees, charges, or other requirements which a local government is expressly required to collect by state statute and which are not imposed to fund programs, services, or facilities of the local government.

PROHIBITION AGAINST SCHOOL IMPACT FEES

22-54-101. Short title.

This article shall be known and may be cited as the "Public School Finance Act of 1994".

22-54-102. Legislative declaration - statewide applicability - intergovernmental agreements.

(1) The general assembly hereby finds and declares that this article is enacted in furtherance of the general assembly's duty under section 2 of article IX of the state constitution to provide for a thorough and uniform system of public schools throughout the state; that a thorough and uniform system requires that all school districts and institute charter schools operate under the same finance formula; and that equity considerations dictate that all districts and institute charter schools be subject to the expenditure and maximum levy provisions of this article. Accordingly, the provisions of this article concerning the financing of public schools for budget years beginning on and after July 1, 1994, shall apply to all school districts and institute charter schools organized under the laws of this state.

(2) The general assembly hereby finds and declares that in enacting this article it has adopted a formula for the support of schools for the 1994-95 budget year and budget years thereafter; however, the adoption of such formula in no way represents a commitment on the part of the general assembly concerning the level of total funding for schools for the 1995-96 budget year or any budget year thereafter.

(3) (a) Nothing in this article shall be construed to prohibit local governments from cooperating with school districts through intergovernmental agreements to fund, construct, maintain, or manage capital construction projects or other facilities as set forth in section 22-45-103 (1)(c)(I)(A) or (1)(c)(I)(D), including, but not limited to, swimming pools, playgrounds, or ball fields, as long as funding for such projects is provided solely from a source of local government revenue that is otherwise authorized by law **except impact fees or other similar development charges or fees**.

(b) Notwithstanding any provision of paragraph (a) of this subsection (3) to the contrary, nothing in this subsection (3) shall be construed to:

(I) Limit or restrict a county's power to require the reservation or dedication of sites and land areas for schools or the payment of moneys in lieu thereof pursuant to section 30-28-133 (4)(a), C.R.S., or to limit a local government's ability to accept and expend impact fees or other similar development charges or fees contributed voluntarily on or before December 31, 1997, to fund the capital projects of school districts according to the terms of agreements voluntarily entered into on or before June 4, 1996, between all affected parties;

(II) Repealed.

(III) Grant authority to local governments to require the reservation or dedication of sites and land areas for schools or the payment of moneys in lieu thereof; however, the prohibition on impact fees or other similar development charges or fees contained in this subsection (3) shall not be construed to restrict the authority of any local government to require the reservation or dedication of sites and land areas for schools or the payment of moneys in lieu thereof if such local government otherwise has such authority granted by law.

(4) If the December 2015 revenue forecast prepared by the legislative council staff estimates that the amount of local property tax revenues that will be available to districts for the 2015-16 budget year will be greater than the amount estimated in the December 2014 revenue forecast, it is the intent of the general assembly, through the supplemental appropriations process during the 2016 regular legislative session, to maintain and not reduce state appropriations for school finance funding after consideration of other forecast changes, including changes in the number of pupils and at-risk pupils enrolled, the inflation rate, and the expected state education fund revenues.

Delaware

Delaware Code Annotated
Title 29, State Government
Subchapter II: Development of State Impact Fees

[downloaded 1/5/2025]

§ 9121. Findings.

The General Assembly finds that an equitable program for planning and financing public facilities needed to serve new growth and development is necessary in order to promote and accommodate orderly growth and development and to protect the public health, safety and general welfare of the citizens of the State. It is the intent of this subchapter to:

(1) Ensure that adequate public facilities are available to serve new growth and development;

(2) Promote orderly growth and development by establishing uniform standards by which municipalities and counties may require that new growth and development pay a proportionate share of the cost of new public facilities needed to serve new growth and development; [underline added]

(3) Establish standards for the determination of impact fees for state facilities and services; and

(4) Ensure that new growth and development is required to pay no more than its proportionate share of the cost of public facilities needed to serve new growth and development and to prevent duplicate and ad hoc development exactions.

(73 Del. Laws, c. 185, § 1.)

§ 9122. Definitions.

For purposes of this subchapter, the following definitions shall apply:

(1) "Community" means those areas designated as communities in the Strategies for State Policies and Spending adopted by the Governor's Cabinet Committee on State Planning Issues on December 23, 1999;

(2) "Developing area" means an area designated as a developing area in the Strategies for State Policies and Spending adopted by the Governor's Cabinet Committee on State Planning Issues on December 23, 1999;

(3) "Development" means any construction or expansion of a building, structure or use, any change in use of a building or structure, or any change in the use of land, any of which creates additional demand and need for public facilities;

(4) "Environmentally sensitive developing area" means an area designated as an environmentally sensitive developing area in the Strategies for State Policies and Spending adopted by the Governor's Cabinet Committee on State Planning Issues on December 23, 1999;

(5) "Impact fee**" means a payment of money imposed upon development as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve new growth and development;**

(6) "Proportionate share" means that portion of the cost of system improvements that is reasonably related to the service demands and needs of the project;

(7) "Rural area" means an area designated as a rural area in the Strategies for State Policies and Spending adopted by the Governor's Cabinet Committee on State Planning Issues on December 23, 1999;

(8) "State public facilities" means:

a. Roads, streets and bridges, including rights of way, traffic signals, landscaping and any local components of state or federal highways;

b. Transit facilities;

c. State-provided police service;

d. State-provided emergency services; and

e. Schools.

(9) "System improvement costs" means costs incurred to provide additional state public facilities capacity needed to serve new growth and development for planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including the cost of constructing or reconstructing system improvements or facility expansions;

(10) "System improvements" means capital improvements that are public facilities and are designed to provide service to the community at large.
(73 Del. Laws, c. 185, § 1; 78 Del. Laws, c. 92, § 36.)

§ 9123. Development of impact fees.

(a) In addition to its responsibilities set forth above in [former] § 9102 of this title [now repealed], the Cabinet Committee on State Planning Issues shall develop a schedule of impact fees for development throughout the State. The Cabinet Committee on State Planning Issues may engage a qualified consultant to assist in development of a fee structure that accurately represents the incremental costs to the State of providing infrastructure and services in areas where minimal investment is planned by the State.

(b) The schedule of impact fees shall include proposed impact fees for development with respect to each of the state public facilities identified in § 9122(8) of this title.

(c) The schedule of impact fees shall include recommended fee levels for development in environmentally sensitive developing areas, secondary developing areas, and rural areas. The schedule of impact fees shall not recommend impact fees for communities or developing areas.

(d) The schedule of impact fees developed by the Advisory Council shall be submitted to the Joint Bond Bill Committee of the General Assembly on or before May 1, 2002. The schedule of impact fees shall be accepted, rejected or modified by the Joint Bond Bill Committee and thereafter approved by the General Assembly by appropriate legislation.

(e) Impact fees developed pursuant to this section shall not exceed the proportionate share of the cost of system improvements, as defined in this subchapter.
(73 Del. Laws, c. 185, § 1; 73 Del. Laws, c. 224, § 9; 78 Del. Laws, c. 92, § 37.)

§ 9124. County impact fees.

(a) County governments may develop and establish impact fees for services for which the county will bear increased costs of development. These areas may include but are not limited to:

(1) Water and sewer construction;

(2) Libraries;

(3) Fire-house construction; and

(4) Emergency services.

(b) [Repealed.]
(73 Del. Laws, c. 185, § 1; 76 Del. Laws, c. 21, § 1.)

§ 9125. Farm residences.

No impact fees adopted pursuant to this subchapter shall be imposed on a primary residence constructed on a parcel of land zoned as farmland and actively devoted to farming, provided that the individuals living in the residence use it as their primary residence, and either:

(1) Are actively farming the land; or

(2) Are relatives of the owners of the parcel of land.

(73 Del. Laws, c. 185, § 1.)

Municipal Home Rule Power

Delaware Code Annotated
Title 22 Municipalities
Chapter 8 Home Rule
Subchapter I General Provisions

§ 801 Definitions.

As used in this chapter:

(1) "Charter amendment" means language which will amend, adopt or repeal a municipal charter.

(2) "Chief executive officer" means the mayor if such there be or, if there be none, then it means the president of the legislative body of a municipal corporation or, if there be none, then it means the presiding officer of the legislative body of a municipal corporation.

(3) "Municipal corporation" includes all cities, towns and villages created before or after December 28, 1961, under any general or special law of this State for general governmental purposes which possess legislative, administrative and police powers for the general exercise of municipal functions and which carry on such functions through a set of elected and other officials.

(4) "Qualified voter" means those persons who, under the terms of a municipal charter, shall be authorized to vote in elections within that municipal corporation.

(22 Del. C. 1953, § 801; 53 Del. Laws, c. 260.)

§ 802 Applicability of chapter; grant of power.

Every municipal corporation in this State containing a population of at least 1,000 persons as shown by the last official federal decennial census may proceed as set forth in this chapter to amend its municipal charter and may, subject to the conditions and limitations imposed by this chapter, amend its charter so as to have and assume all powers which, under the Constitution of this State, it would be competent for the General Assembly to grant by specific enumeration and which are not denied by statute. This grant of power does not include the power to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power, nor does it include power to define and provide for the punishment of a felony. [underline added]

(22 Del. C. 1953, § 802; 53 Del. Laws, c. 260.)

Florida Impact Fee Act

[updated February 1, 2014]

[this section of Florida Statutes was created by Senate Bill 1194, and became effective on June 14, 2006; subsection (5) was added by House Bill 277, which became effective July 1, 2009; subsection (3)(d) was amended effective in 2011]

163.31801 Impact fees; short title; intent; definitions; ordinances levying impact fees.

(1) This section may be cited as the "Florida Impact Fee Act."

(2) The Legislature finds that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth. The Legislature further finds that impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction. Due to the growth of impact fee collections and local governments' reliance on impact fees, it is the intent of the Legislature to ensure that, when a county or municipality adopts an impact fee by ordinance or a special district adopts an impact fee by resolution, the governing authority complies with this section.

(3) An impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum:

(a) Require that the calculation of the impact fee be based on the most recent and localized data.

(b) Provide for accounting and reporting of impact fee collections and expenditures. If a local governmental entity imposes an impact fee to address its infrastructure needs, the entity shall account for the revenues and expenditures of such impact fee in a separate accounting fund.

(c) Limit administrative charges for the collection of impact fees to actual costs.

(d) Require that notice be provided no less than 90 days before the effective date of an ordinance or resolution imposing a new or ~~amended~~ increased impact fee. A county or municipality is not required to wait 90 days to decrease, suspend, or eliminate an impact fee.

(4) Audits of financial statements of local governmental entities and district school boards which are performed by a certified public accountant pursuant to s. 218.39 and submitted to the Auditor General must include an affidavit signed by the chief financial officer of the local governmental entity or district school board stating that the local governmental entity or district school board has complied with this section.

(5) In any action challenging an impact fee, the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee meets the requirements of state legal precedent or this section. The court may not use a deferential standard.

[the remainder of this section consists of Florida Statute provisions that contain references to impact fees]

Title XI: COUNTY ORGANIZATION AND INTERGOVERNMENTAL RELATIONS
Chapter 163: INTERGOVERNMENTAL PROGRAMS

163.3180 Concurrency.

…

(5) [Transportation concurrency]

…

(f) Local governments are encouraged to develop tools and techniques to complement the application of transportation concurrency such as:

1. Adoption of long-term strategies to facilitate development patterns that support multimodal solutions, including urban design, and appropriate land use mixes, including intensity and density.

2. Adoption of an areawide level of service not dependent on any single road segment function.

3. Exempting or discounting impacts of locally desired development, such as development in urban areas, redevelopment, job creation, and mixed use on the transportation system.

4. Assigning secondary priority to vehicle mobility and primary priority to ensuring a safe, comfortable, and attractive pedestrian environment, with convenient interconnection to transit.

5. Establishing multimodal level of service standards that rely primarily on nonvehicular modes of transportation where existing or planned community design will provide adequate level of mobility.

6. Reducing impact fees or local access fees to promote development within urban areas, multimodal transportation districts, and a balance of mixed-use development in certain areas or districts, or for affordable or workforce housing.

…

(h) 1. Local governments that continue to implement a transportation concurrency system, whether in the form adopted into the comprehensive plan before the effective date of the Community Planning Act, chapter 2011-139, Laws of Florida, or as subsequently modified, must:

…

2. An applicant shall not be held responsible for the additional cost of reducing or eliminating deficiencies. When an applicant contributes or constructs its proportionate share pursuant to this paragraph, a local government may not require payment or construction of transportation facilities whose costs would be greater than a development's proportionate share of the improvements necessary to mitigate the development's impacts.

…

e. The applicant shall receive a credit on a dollar-for-dollar basis for impact fees, mobility fees, and other transportation concurrency mitigation requirements paid or payable in the future for the project. The credit shall be reduced up to 20 percent by the percentage share that the project's traffic represents of the added capacity of the selected improvement, or by the amount specified by local ordinance, whichever yields the greater credit.

…

(i) If a local government elects to repeal transportation concurrency, it is encouraged to adopt an alternative mobility funding system that uses one or more of the tools and techniques identified in paragraph (f). Any alternative mobility funding system adopted may not be used to deny, time, or phase an application for site plan approval, plat approval, final subdivision approval, building permits, or the functional equivalent of such approvals provided that the developer agrees to pay for the development's identified transportation impacts via the funding mechanism implemented by the local government. The revenue from the funding mechanism used in the alternative system must be used to implement the needs of the local government's plan which serves as the basis for the fee imposed. A mobility fee-based funding system must comply with the dual rational nexus test applicable to impact fees. An alternative system that is not mobility fee-based shall not be applied in a manner that imposes upon new development any responsibility for funding an existing transportation deficiency as defined in paragraph (h).

(13) [School Concurrency]

...

(e) Availability standard.

...

2. If the education facilities plan and the public educational facilities element authorize a contribution of land; the construction, expansion, or payment for land acquisition; or the construction or expansion of a public school facility, or a portion thereof, as proportionate-share mitigation, the local government shall credit such a contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by local ordinance for the same need, on a dollar-for-dollar basis at fair market value.

...

(15) [Multimodal transportation districts]

...

(d) Local governments may reduce impact fees or local access fees for development within multimodal transportation districts based on the reduction of vehicle trips per household or vehicle miles of travel expected from the development pattern planned for the district.

...

(16) [Transportation facilities]

...

(b) [Transportation concurrency management system]

...

2. Proportionate fair-share mitigation shall be applied as a credit against impact fees to the extent that all or a portion of the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the local government's impact fee ordinance.

Title XI: County Organization and Intergovernmental Relations
Chapter 163: Intergovernmental Programs

163.2517 Designation of urban infill and redevelopment area.

(3) [Urban infill and redevelopment area plan]

(j) Identify and adopt a package of financial and local government incentives which the local government will offer for new development, expansion of existing development, and redevelopment within the urban infill and redevelopment area. Examples of such incentives include:

...

5. Lower transportation impact fees for development which encourages more use of public transit, pedestrian, and bicycle modes of transportation.

Title XIII: Planning and Development
Chapter 191: Independent Special Fire Control Districts

191.009 Taxes; non-ad valorem assessments; impact fees and user charges.

(4) IMPACT FEES.--If the general purpose local government has not adopted an impact fee for fire services which is distributed to the district for construction within its jurisdictional boundaries, and the Legislature has authorized independent special fire control districts to impose impact fees by special act or general law other than this act, the board may establish a schedule of impact fees in compliance with any standards set by general law for new construction to pay for the cost of new facilities and equipment, the need for which is in whole or in part the result of new construction. The impact fees collected by the district under this subsection shall be kept separate from other revenues of the district and must be used exclusively to acquire, purchase, or construct new facilities or portions thereof needed to provide fire protection and emergency services to new construction. As used in this subsection, "new facilities" means land, buildings, and capital equipment,

including, but not limited to, fire and emergency vehicles, radiotelemetry equipment, and other firefighting or rescue equipment. The board shall maintain adequate records to ensure that impact fees are expended only for permissible new facilities or equipment. The board may enter into agreements with general purpose local governments to share in the revenues from fire protection impact fees imposed by such governments.

Title XIX: PUBLIC BUSINESS
Chapter 290: URBAN REDEVELOPMENT

290.0057 Enterprise zone development plan.

(1) Any application for designation as a new enterprise zone must be accompanied by a strategic plan adopted by the governing body of the municipality or county, or the governing bodies of the county and one or more municipalities together. At a minimum, the plan must:

...

(e) Commit the governing body or bodies to enact and maintain local fiscal and regulatory incentives, if approval for the area is received under s. 290.0065. These incentives may include the municipal public service tax exemption provided by s. 166.231, the economic development ad valorem tax exemption provided by s. 196.1995, the occupational license tax exemption provided by s. 205.054, local impact fee abatement or reduction, or low-interest or interest-free loans or grants to businesses to encourage the revitalization of the nominated area.

Title XXVIII: Natural Resources; Conservation, Reclamation, and Use
Chapter 380: Land and Water Management

380.06. Developments of regional impact.

(16) CREDITS AGAINST LOCAL IMPACT FEES.

(a) If the development order requires the developer to contribute land or a public facility or construct, expand, or pay for land acquisition or construction or expansion of a public facility, or portion thereof, and the developer is also subject by local ordinance to impact fees or exactions to meet the same needs, the local government shall establish and implement a procedure that credits a development order exaction or fee toward an impact fee or exaction imposed by local ordinance for the same need; however, if the Florida Land and Water Adjudicatory Commission imposes any additional requirement, the local government shall not be required to grant a credit toward the local exaction or impact fee unless the local government determines that such required contribution, payment, or construction meets the same need that the local exaction or impact fee would address. The nongovernmental developer need not be required, by virtue of this credit, to competitively bid or negotiate any part of the construction or design of the facility, unless otherwise requested by the local government.

(b) If the local government imposes or increases an impact fee or exaction by local ordinance after a development order has been issued, the developer may petition the local government, and the local government shall modify the affected provisions of the development order to give the developer credit for any contribution of land for a public facility, or construction, expansion, or contribution of funds for land acquisition or construction or expansion of a public facility, or a portion thereof, required by the development order toward an impact fee or exaction for the same need.

(c) The local government and the developer may enter into capital contribution front-ending agreements as part of a development-of-regional-impact development order to reimburse the developer, or the developer's successor, for voluntary contributions paid in excess of his or her fair share.

(d) This subsection does not apply to internal, onsite facilities required by local regulations or to any offsite facilities to the extent such facilities are necessary to provide safe and adequate services to the development.

380.0651. Statewide guidelines and standards.

...

(4) [Two or more developments]

...

(e) In order to encourage developers to design, finance, donate, or build infrastructure, public facilities, or services, the state land planning agency may enter into binding agreements with two or more developers providing that the joint planning, sharing, or use of specified public infrastructure, facilities, or services by the developers shall not be considered in any subsequent determination of whether a unified plan of development exists for their developments. Such binding agreements may authorize the developers to pool impact fees or impact-fee credits, or to enter into front-end agreements, or other financing arrangements by which they collectively agree to design, finance, donate, or build such public infrastructure, facilities, or services. Such agreements shall be conditioned upon a subsequent determination by the appropriate local government of consistency with the approved local government comprehensive plan and land development regulations. Additionally, the developers must demonstrate that the provision and sharing of public infrastructure, facilities, or services is in the public interest and not merely for the benefit of the developments which are the subject of the agreement. Developments that are the subject of an agreement pursuant to this paragraph shall be aggregated if the state land planning agency determines that sufficient aggregation factors are present to require aggregation without considering the design features, financial arrangements, donations, or construction that are specified in and required by the agreement.

Title XXX: Social Welfare
Chapter 420: Housing

420.9076 Adoption of affordable housing incentive strategies; committees.

...

(4) The advisory committee shall review the established policies and procedures, ordinances, land development regulations, and adopted local government comprehensive plan of the appointing local government and shall recommend specific initiatives to encourage or facilitate affordable housing while protecting the ability of the property to appreciate in value. Such recommendations may include the modification or repeal of existing policies, procedures, ordinances, regulations, or plan provisions; the creation of exceptions applicable to affordable housing; or the adoption of new policies, procedures, regulations, ordinances, or plan provisions. At a minimum, each advisory committee shall make recommendations on affordable housing incentives in the following areas:

(a) The processing of approvals of development orders or permits, as defined in s. 163.3164(7) and (8), for affordable housing projects is expedited to a greater degree than other projects.

(b) The modification of impact-fee requirements, including reduction or waiver of fees and alternative methods of fee payment for affordable housing.

...

Title XLVIII: K-20 Education Code
Chapter 1013: Educational Facilities

1013.356 Local funding for educational facilities benefit districts or community development districts.

Upon confirmation by a district school board of the commitment of revenues by an educational facilities benefit district or community development district necessary to construct and maintain an educational facility contained within an individual district facilities work program or proposed by an approved charter school or a charter school applicant, the following funds shall be provided to the educational facilities benefit district or community development district annually, beginning with the next fiscal year after confirmation until the district's financial obligations are completed:

(1) All educational facilities impact fee revenue collected for new development within the educational facilities benefit district or community development district. Funds provided under this subsection shall be used to fund the construction and capital maintenance costs of educational facilities.

(2) For construction and capital maintenance costs not covered by the funds provided under subsection (1), an annual amount contributed by the district school board equal to one-half of the remaining costs of construction and capital maintenance of the educational facility. Any construction costs above the cost-per-student criteria established for the SIT Program in s. 1013.72(2) shall be funded exclusively by the educational facilities benefit district or the community development district. Funds contributed by a district school board shall not be used to fund operational costs.

Educational facilities funded pursuant to this act may be constructed on land that is owned by any person after the district school board has acquired from the owner of the land a long-term lease for the use of this land for a period of not less than 40 years or the life expectancy of the permanent facilities constructed thereon, whichever is longer. All interlocal agreements entered into pursuant to this act shall provide for ownership of educational facilities funded pursuant to this act to revert to the district school board if such facilities cease to be used for public educational purposes prior to 40 years after construction or prior to the end of the life expectancy of the educational facilities, whichever is longer.

1013.371 Conformity to codes.

(1) CONFORMITY TO FLORIDA BUILDING CODE AND FLORIDA FIRE PREVENTION CODE REQUIRED FOR APPROVAL.

(a) Except as otherwise provided in paragraph (b), all public educational and ancillary plants constructed by a board must conform to the Florida Building Code and the Florida Fire Prevention Code, and the plants are exempt from all other state building codes; county, municipal, or other local amendments to the Florida Building Code and local amendments to the Florida Fire Prevention Code; building permits, and assessments of fees for building permits, except as provided in s. 553.80; ordinances; road closures; and impact fees or service availability fees.

...

Georgia Development Impact Fee Act

*** Current Through the 2014 Regular Session ***

TITLE 36. LOCAL GOVERNMENT
PROVISIONS APPLICABLE TO COUNTIES AND MUNICIPAL CORPORATIONS
CHAPTER 71. DEVELOPMENT IMPACT FEES

O.C.G.A. § 36-71-1 (2014)

§ 36-71-1. Short title; legislative findings and intent

(a) This chapter shall be known and may be cited as the "Georgia Development Impact Fee Act."

(b) The General Assembly finds that an equitable program for planning and financing public facilities needed to serve new growth and development is necessary in order to promote and accommodate orderly growth and development and to protect the public health, safety, and general welfare of the citizens of the State of Georgia. It is the intent of this chapter to:

(1) Ensure that adequate public facilities are available to serve new growth and development;

(2) Promote orderly growth and development by establishing uniform standards by which municipalities and counties may require that new growth and development pay a proportionate share of the cost of new public facilities needed to serve new growth and development;

(3) Establish minimum standards for the adoption of development impact fee ordinances by municipalities and counties; and

(4) Ensure that new growth and development is required to pay no more than its proportionate share of the cost of public facilities needed to serve new growth and development and to prevent duplicate and ad hoc development exactions.

HISTORY: Code 1981, § 36-71-1, enacted by Ga. L. 1990, p. 692, § 1.

§ 36-71-2. Definitions

As used in this chapter, the term:

(1) "Capital improvement" means an improvement with a useful life of ten years or more, by new construction or other action, which increases the service capacity of a public facility.

(2) "Capital improvements element" means a component of a comprehensive plan adopted pursuant to Chapter 70 of this title which sets out projected needs for system improvements during a planning horizon established in the comprehensive plan, a schedule of capital improvements that will meet the anticipated need for system improvements, and a description of anticipated funding sources for each required improvement.

(3) "Comprehensive plan" has the same meaning as provided for in Chapter 70 of this title.

(4) "Developer" means any person or legal entity undertaking development.

(5) "Development" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any change in the use of land, any of which creates additional demand and need for public facilities.

(6) "Development approval" means any written authorization from a municipality or county which authorizes the commencement of construction.

(7) "Development exaction" means a requirement attached to a development approval or other municipal or county action approving or authorizing a particular development project, including but not limited to a rezoning, which requirement compels the payment, dedication, or contribution of goods, services, land, or money as a condition of approval.

(8) "Development impact fee" means a payment of money imposed upon development as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve new growth and development.

(9) "Encumber" means to legally obligate by contract or otherwise commit to use by appropriation or other official act of a municipality or county.

(10) "Feepayor" means that person who pays a development impact fee or his successor in interest where the right or entitlement to any refund of previously paid development impact fees which is required by this chapter has been expressly transferred or assigned to the successor in interest. In the absence of an express transfer or assignment of the right or entitlement to any refund of previously paid development impact fees, the right or entitlement shall be deemed "not to run with the land."

(11) "Governmental entity" means any water authority, water and sewer authority, or water or waste-water authority created by or pursuant to an Act of the General Assembly of Georgia.

(12) "Level of service" means a measure of the relationship between service capacity and service demand for public facilities in terms of demand to capacity ratios, the comfort and convenience of use or service of public facilities, or both.

(13) "Present value" means the current value of past, present, or future payments, contributions or dedications of goods, services, materials, construction, or money.

(14) "Project" means a particular development on an identified parcel of land.

(15) "Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project and are not system improvements. The character of the improvement shall control a determination of whether an improvement is a project improvement or system improvement and the physical location of the improvement on site or off site shall not be considered determinative of whether an improvement is a project improvement or a system improvement. If an improvement or facility provides or will provide more than incidental service or facilities capacity to persons other than users or occupants of a particular project, the improvement or facility is a system improvement and shall not be considered a project improvement. No improvement or facility included in a plan for public facilities approved by the governing body of the municipality or county shall be considered a project improvement.

(16) "Proportionate share" means that portion of the cost of system improvements which is reasonably related to the service demands and needs of the project within the defined service area.

(17) "Public facilities" means:

(A) Water supply production, treatment, and distribution facilities;

(B) Waste-water collection, treatment, and disposal facilities;

(C) Roads, streets, and bridges, including rights of way, traffic signals, landscaping, and any local components of state or federal highways;

(D) Storm-water collection, retention, detention, treatment, and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;

(E) Parks, open space, and recreation areas and related facilities;

(F) Public safety facilities, including police, fire, emergency medical, and rescue facilities; and

(G) Libraries and related facilities.

(18) "Service area" means a geographic area defined by a municipality, county, or intergovernmental agreement in which a defined set of public facilities provide service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles or both.

(19) "System improvement costs" means costs incurred to provide additional public facilities capacity needed to serve new growth and development for planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including the cost of constructing or reconstructing system improvements or facility expansions, including but not limited to the construction contract price, surveying and engineering fees, related land acquisition costs (including land purchases, court awards and costs, attorneys' fees, and expert witness fees), and expenses incurred for qualified staff or any qualified engineer, planner, architect, landscape architect, or financial consultant for preparing or updating the capital improvement element, and administrative costs, provided that such administrative costs shall not exceed 3 percent of the total amount of the costs. Projected interest charges and other finance costs may be included if the impact fees are to be used for the payment of principal and interest on bonds, notes, or other financial obligations issued by or on behalf of the municipality or county to finance the capital improvements element but such costs do not include routine and periodic maintenance expenditures, personnel training, and other operating costs.

(20) "System improvements" means capital improvements that are public facilities and are designed to provide service to the community at large, in contrast to "project improvements."

HISTORY: Code 1981, § 36-71-2, enacted by Ga. L. 1990, p. 692, § 1; Ga. L. 1992, p. 905, § 1; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2007, p. 414, § 1/HB 232.

§ 36-71-3. Imposition of development impact fees

(a) Municipalities and counties which have adopted a comprehensive plan containing a capital improvements element are authorized to impose by ordinance development impact fees as a condition of development approval on all development pursuant to and in accordance with the provisions of this chapter. After the transition period provided in this chapter, development exactions for other than project improvements shall be imposed by municipalities and counties only by way of development impact fees imposed pursuant to and in accordance with the provisions of this chapter.

(b) Notwithstanding any other provision of this chapter, that portion of a project for which a valid building permit has been issued prior to the effective date of a municipal or county development impact fee ordinance

shall not be subject to development impact fees so long as the building permit remains valid and construction is commenced and is pursued according to the terms of the permit.

(c) Payment of a development impact fee shall be deemed to be in compliance with any municipal or county requirement for the provision of adequate public facilities or services in regard to the system improvements for which the development impact fee was paid.

HISTORY: Code 1981, § 36-71-3, enacted by Ga. L. 1990, p. 692, § 1.

§ 36-71-4. Calculation of fees

(a) A development impact fee shall not exceed a proportionate share of the cost of system improvements, as defined in this chapter.

(b) Development impact fees shall be calculated and imposed on the basis of service areas.

(c) Development impact fees shall be calculated on the basis of levels of service for public facilities that are adopted in the municipal or county comprehensive plan that are applicable to existing development as well as the new growth and development.

(d) A municipal or county development impact fee ordinance shall provide that development impact fees shall be collected not earlier in the development process than the issuance of a building permit authorizing construction of a building or structure; provided, however, that development impact fees for public facilities described in subparagraph (D) of paragraph (17) of Code Section 36-71-2 may be collected at the time of a development approval that authorizes site construction or improvement which requires public facilities described in subparagraph (D) of paragraph (17) of Code Section 36-71-2.

(e) A municipal or county development impact fee ordinance shall include a schedule of impact fees specifying the development impact fee for various land uses per unit of development on a service area by service area basis. The ordinance shall provide that a developer shall have the right to elect to pay a project's proportionate share of system improvement costs by payment of development impact fees according to the fee schedule as full and complete payment of the development project's proportionate share of system improvement costs.

(f) A municipal or county development impact fee ordinance shall be adopted in accordance with the procedural requirements of Code Section 36-71-6.

(g) A municipal or county development impact fee ordinance shall include a provision permitting individual assessments of development impact fees at the option of applicants for development approval under guidelines established in the ordinance.

(h) A municipal or county development impact fee ordinance shall provide for a process whereby a developer may receive a certification of the development impact fee schedule or individual assessment for a particular project, which shall establish the development impact fee for a period of 180 days from the date of certification.

(i) A municipal or county development impact fee ordinance shall include a provision for credits in accordance with the requirements of Code Section 36-71-7.

(j) A municipal or county development impact fee ordinance shall include a provision prohibiting the expenditure of development impact fees except in accordance with the requirements of Code Section 36-71-8.

(k) A municipal or county development impact fee ordinance may provide for the imposition of a development impact fee for system improvement costs previously incurred by a municipality or county to the extent that new growth and development will be served by the previously constructed system improvements.

(l) A municipal or county development impact fee ordinance may exempt all or part of particular development projects from development impact fees if:

(1) Such projects are determined to create extraordinary economic development and employment growth or affordable housing;

(2) The public policy which supports the exemption is contained in the municipality's or county's comprehensive plan; and

(3) The exempt development project's proportionate share of the system improvement is funded through a revenue source other than development impact fees.

(m) A municipal or county development impact fee ordinance shall provide that development impact fees shall only be spent for the category of system improvements for which the fees were collected and in the service area in which the project for which the fees were paid is located.

(n) A municipal or county development impact fee ordinance shall provide that, in the event a building permit is abandoned, credit shall be given for the present value of the development impact fee against future development impact fees for the same parcel of land.

(o) A municipal or county development impact fee ordinance shall provide for a refund of development impact fees in accordance with the requirements of Code Section 36-71-9.

(p) A municipal or county development impact fee ordinance shall provide for appeals from administrative determinations regarding development impact fees in accordance with the requirements of Code Section 36-71-10.

(q) Development impact fees shall be based on actual system improvement costs or reasonable estimates of such costs.

(r) Development impact fees shall be calculated on a basis which is net of credits for the present value of revenues that will be generated by new growth and development based on historical funding patterns and that are anticipated to be available to pay for system improvements, including taxes, assessments, user fees, and intergovernmental transfers.

HISTORY: Code 1981, § 36-71-4, enacted by Ga. L. 1990, p. 692, § 1; Ga. L. 1993, p. 91, § 36; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2007, p. 414, § 2/HB 232.

§ 36-71-5. Development Impact Fee Advisory Committee

(a) Prior to the adoption of a development impact fee ordinance, a municipality or county adopting an impact fee program shall establish a Development Impact Fee Advisory Committee.

(b) Such committee shall be composed of not less than five nor more than ten members appointed by the governing authority of the municipality or county and at least 50 percent of the membership shall be representatives from the development, building, or real estate industries. An existing planning commission or other existing committee that meets these requirements may serve as the Development Impact Fee Advisory Committee.

(c) The Development Impact Fee Advisory Committee shall serve in an advisory capacity to assist and advise the governing body of the municipality or county with regard to the adoption of a development impact fee ordinance. In that the committee is advisory, no action of the committee shall be considered a necessary prerequisite for municipal or county action in regard to adoption of an ordinance.

HISTORY: Code 1981, § 36-71-5, enacted by Ga. L. 1990, p. 692, § 1; Ga. L. 2006, p. 72, § 36/SB 465; Ga. L. 2007, p. 414, § 3/HB 232.

§ 36-71-6. Hearings on proposed fee ordinance

Prior to the adoption of an ordinance imposing a development impact fee pursuant to this chapter, the governing body of a municipality or county shall cause two duly noticed public hearings to be held in regard to the proposed ordinance. The second hearing shall be held at least two weeks after the first hearing.

HISTORY: Code 1981, § 36-71-6, enacted by Ga. L. 1990, p. 692, § 1.

§ 36-71-7. Credit for present value of construction accepted by municipality or county from developer

(a) In the calculation of development impact fees for a particular project, credit shall be given for the present value of any construction of improvements or contribution or dedication of land or money required or accepted by a municipality or county from a developer or his predecessor in title or interest for system improvements of the category for which the development impact fee is being collected. Credits shall not be given for project improvements.

(b) In the event that a developer enters into an agreement with a county or municipality to construct, fund, or contribute system improvements such that the amount of the credit created by such construction, funding, or contribution is in excess of the development impact fees which would otherwise have been paid for the development project, the developer shall be reimbursed for such excess construction, funding, or contribution from development impact fees paid by other development located in the service area which is benefited by such improvements.

HISTORY: Code 1981, § 36-71-7, enacted by Ga. L. 1990, p. 692, § 1.

§ 36-71-8. Deposit and expenditure of fees; annual report

(a) An ordinance imposing development impact fees shall provide that all development impact fee funds shall be maintained in one or more interest-bearing accounts. Accounting records shall be maintained for each category of system improvements and the service area in which the fees are collected. Interest earned on development impact fees shall be considered funds of the account on which it is earned and shall be subject to all restrictions placed on the use of development impact fees under the provisions of this chapter. The accounting records shall include the following information:

(1) The accounting records to be maintained shall specify the address of each property which paid development impact fees, the amount of fees paid in each category in which fees were collected, and the date that such fees were paid; and

(2) As to any exemptions granted, the accounting records to be maintained shall specify the address of each property for which exemptions were granted, the reason for which such exemption was granted, and the revenue source from which the exempt development's proportionate share of the system improvements is to be paid.

(b) Expenditures of development impact fees shall be made only for the category of system improvements and in the service area for which the development impact fee was imposed as shown by the capital improvements element and as authorized by this chapter. Development impact fees shall not be used to pay for any purpose that does not involve system improvements that create additional service available to serve new growth and development.

(c) (1) Development impact fees, collected for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways, shall be expended to fund, in whole or in part, system improvement projects:

(A) That have been identified in the capital improvements element of the municipality's comprehensive development plan; and

(B) That are chosen by a municipality after consideration of the following factors:

(i) The proximity of the proposed system improvements to developments within the service area which have generated development impact fees collected for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways; and

(ii) The proposed system improvements which will have the greatest effect on level of service for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways impacted by the developments which have paid such impact fees.

(2) Where the expenditure of development impact fees paid by a development is allocated to system improvements in the general area of such development, through an agreement between the municipality and the developer and such agreement is approved by the governing body, the analysis required by subparagraph (B) of paragraph (1) of this subsection shall not be applicable.

(3) The provisions of this subsection shall only apply to municipalities that have more than 140,000 parcels of land.

(d) (1) As part of its annual audit process, a municipality or county shall prepare an annual report describing the amount of any development impact fees collected, encumbered, and used during the preceding year by category of public facility and service area.

(2) In municipalities that have more than 140,000 parcels of land, the portion of the annual report relating to development impact fees collected for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways shall be referred to such municipality's most recently constituted Development Impact Fee Advisory Committee which shall report to the governing body of such municipality any perceived inequities in the expenditure of impact fees collected for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any local components of state or federal highways.

HISTORY: Code 1981, § 36-71-8, enacted by Ga. L. 1990, p. 692, § 1; Ga. L. 2007, p. 414, § 4/HB 232.

§ 36-71-9. Refunds

Any municipality or county which adopts a development impact fee ordinance shall provide for refunds in accordance with the following provisions:

(1) Upon the request of an owner of property on which a development impact fee has been paid, a municipality or county shall refund the development impact fee if capacity is available and service is denied or

if the municipality or county, after collecting the fee when service is not available, has failed to encumber the development impact fee or commence construction within six years after the date that the fee was collected. In determining whether development impact fees have been encumbered, development impact fees shall be considered encumbered on a first-in, first-out (FIFO) basis;

(2) When the right to a refund exists due to a failure to encumber development impact fees, the municipality or county shall provide written notice of entitlement to a refund to the feepayor who paid the development impact fee at the address shown on the application for development approval or to a successor in interest who has given notice to the municipality or county of a transfer or assignment of the right or entitlement to a refund and who has provided a mailing address. Such notice shall also be published within 30 days after the expiration of the six-year period after the date that the development impact fees were collected and shall contain the heading "Notice of Entitlement to Development Impact Fee Refund";

(3) An application for a refund shall be made within one year of the time such refund becomes payable under paragraph (1) or (2) of this Code section or within one year of publication of the notice of entitlement to a refund under this Code section, whichever is later;

(4) A refund shall include a refund of a pro rata share of interest actually earned on the unused or excess development impact fee collected;

(5) All refunds shall be made to the feepayor within 60 days after it is determined by a municipality or county that a sufficient proof of claim for a refund has been made; and

(6) The feepayor shall have standing to sue for a refund under the provisions of this chapter if there has been a timely application for a refund and the refund has been denied or has not been made within one year of submission of the application for refund to the collecting municipality or county.

HISTORY: Code 1981, § 36-71-9, enacted by Ga. L. 1990, p. 692, § 1.

§ 36-71-10. Appeal of fee determination; arbitration

(a) A municipality or county which adopts a development impact fee ordinance shall provide for administrative appeals to the governing body or such other body as designated in the ordinance of a determination of the development impact fees for a particular project.

(b) A developer may pay a development impact fee under protest in order to obtain a development approval or building permit, as the case may be. A developer making such payment shall not be estopped from exercising the right of appeal provided by this chapter, nor shall such developer be estopped from receiving a refund of any amount deemed to have been illegally collected.

(c) A municipality or county development impact fee ordinance may provide for the resolution of disputes over the development impact fee by binding arbitration through the American Arbitration Association or otherwise.

HISTORY: Code 1981, § 36-71-10, enacted by Ga. L. 1990, p. 692, § 1.

§ 36-71-11. Intergovernmental agreements

Municipalities and counties which are jointly affected by development are authorized to enter into intergovernmental agreements with each other, with authorities, or with the state for the purpose of developing joint plans for capital improvements or for the purpose of agreeing to collect and expend

development impact fees for system improvements, or both, provided that such agreement complies with any applicable state laws.

HISTORY: Code 1981, § 36-71-11, enacted by Ga. L. 1990, p. 692, § 1.

§ 36-71-12. Existing municipal and county laws to be brought into conformance with chapter

This chapter shall not repeal any existing laws authorizing a municipality or county to impose fees or require contributions or property dedications for capital improvements; provided, however, that all local ordinances or resolutions imposing development exactions for system improvements on April 4, 1990, shall be brought into conformance with this chapter no later than November 30, 1992.

HISTORY: Code 1981, § 36-71-12, enacted by Ga. L. 1990, p. 692, § 1; Ga. L. 1992, p. 905, § 2.

§ 36-71-13. Construction of reasonable project improvements; private agreements between property owners or developers and municipalities and counties; hook-up or connection fees for water or sewer service; applicability of chapter to water authorities

(a) Nothing in this chapter shall prevent a municipality or county from requiring a developer to construct reasonable project improvements in conjunction with a development project.

(b) Nothing in this chapter shall be construed to prevent or prohibit private agreements between property owners or developers and municipalities, counties, or other governmental entities in regard to the construction or installation of system improvements and providing for credits or reimbursements for system improvement costs incurred by a developer including interproject transfers of credits or providing for reimbursement for project improvement costs which are used or shared by more than one development project.

(c) Nothing in this chapter shall limit a municipality, county, or other governmental entity which provides water or sewer service from collecting a proportionate share of the capital cost of water or sewer facilities by way of hook-up or connection fees as a condition of water or sewer service to new or existing users, provided that the development impact fee ordinance of a municipality or county or other governmental entity that collects development impact fees pursuant to this chapter shall include a provision for credit for such hook-up or connection fees collected by the municipality or county to the extent that such hook-up or connection fee is collected to pay for system improvements. Imposition of such hook-up or connection fees by any governmental entity to pay for system improvements either existing or new shall be consistent with the capital improvement element of the comprehensive plan and shall be subject to the approval of each county, municipality, or combination thereof which appoints the governing body of such entity. The adoption, imposition, collection, and expenditure of such fees for system improvements by any governmental entity shall be subject to the same procedures applicable to the adoption, imposition, collection, and expenditure of development impact fees by a county.

(d) Nothing in this chapter shall apply to a water authority created by Act of the General Assembly, as long as such authority is not established as a political subdivision of the State of Georgia but instead acts subject to the approval of a county governing authority.

HISTORY: Code 1981, § 36-71-13, enacted by Ga. L. 1990, p. 692, § 1; Ga. L. 1991, p. 94, § 36; Ga. L. 1992, p. 905, § 3.

Hawaii Impact Fee Act

[downloaded June 5, 2010]

Title 6. County Organization and Administration
Subtitle 1. Provisions Common to All Counties
Chapter 46. General Provisions

[PART VIII.] IMPACT FEES

§46-141 Definitions.

As used in this part, unless the context requires otherwise:

"Board" means the board of water supply or water board of any county.

"Capital improvements" means the acquisition of real property, improvements to expand capacity and serviceability of existing public facilities, and the development of new public facilities.

"Comprehensive plan" means a coordinated land use plan for the development of public facilities within the jurisdiction of a county based on existing and anticipated needs, showing existing and proposed developments, stating principles to which future development should conform, such as the county's general plans, development plans, or community plans, and the manner in which development should be controlled. In the case of the city and county of Honolulu, public facility maps shall be equivalent to the comprehensive plan required in this part.

"County" or "counties" means the city and county of Honolulu, the county of Hawaii, the county of Kauai, and the county of Maui.

"Credits" means the present value of past or future payments or contributions, including, but not limited to, the dedication of land or construction of a public facility made by a developer toward the cost of existing or future public facility capital improvements, except for contributions or payments made under a development agreement pursuant to section 46-123.

"Developer" means a person, corporation, organization, partnership, association, or other legal entity constructing, erecting, enlarging, altering, or engaging in any development activity.

"Development" means any artificial change to real property that requires a grading or building permit as appropriate, including, but not limited to, construction, expansion, enlargement, alteration, or erection of buildings or structures.

"Discount rate" means the interest rate, expressed in terms of an annual percentage, that is used to adjust past or future financial or monetary payments to present value.

"Impact fees" means the charges imposed upon a developer by a county or board to fund all or a portion of the public facility capital improvement costs required by the development from which it is collected, or to recoup the cost of existing public facility capital improvements made in anticipation of the needs of a development.

"Needs assessment study" means a study required under an impact fee ordinance that determines the need for a public facility, the cost of development, and the level of service standards, and that projects future public facility capital improvement needs; provided that the study shall take into consideration and incorporate any relevant county general plan, development plan, or community plan.

"Non-site related improvements" means land dedications or the provision of public facility capital improvements that are not for the exclusive use or benefit of a development and are not site-related improvements.
"Offset" means a reduction in impact fees designed to fairly reflect the value of non-site related public facility capital improvements provided by a developer pursuant to county land use provisions.

"Present value" means the value of past or future payments adjusted to a base period by a discount rate.

"Proportionate share" means the portion of total public facility capital improvement costs that is reasonably attributable to a development, less:

(1) Any credits for past or future payments, adjusted to present value, for public facility capital improvement costs made or reasonably anticipated to be contributed by a developer in the form of user fees, debt service payments, taxes, or other payments; or

(2) Offsets for non-site related public facility capital improvements provided by a developer pursuant to county land use provisions.

"Public facility capital improvement costs" means costs of land acquisition, construction, planning and engineering, administration, and legal and financial consulting fees associated with construction, expansion, or improvement of a public facility. Public facility capital improvement costs do not include expenditures for required affordable housing, routine and periodic maintenance, personnel, training, or other operating costs.

"Reasonable benefit" means a benefit received by a development from a public facility capital improvement that is greater than the benefit afforded the general public in the jurisdiction imposing the impact fees. Incidental benefit to other developments shall not negate a "reasonable" benefit to a development.

"Recoupment" means the proportionate share of the public facility capital improvement costs of excess capacity in existing capital facilities where excess capacity has been provided in anticipation of the needs of a development.

"Site-related improvements" means land dedications or the provision of public facility capital improvements for the exclusive use or benefit of a development or for the provision of safe and adequate public facilities related to a particular development. [L 1992, c 282, pt of §2; am L 2001, c 235, §1]

§46-142 Authority to impose impact fees; enactment of ordinances required.

(a) Impact fees may be assessed, imposed, levied, and collected by:

(1) Any county for any development, or portion thereof, not involving water supply or service; or

(2) Any board for any development, or portion thereof, involving water supply or service;

provided that the county enacts appropriate impact fee ordinances or the board adopts rules to effectuate the imposition and collection of the fees within their respective jurisdictions.

(b) Except for any ordinance governing impact fees enacted before July 1, 1993, impact fees may be imposed only for those types of public facility capital improvements specifically identified in a county comprehensive plan or a facility needs assessment study. The plan or study shall specify the service standards for each type of facility subject to an impact fee; provided that the standards shall apply equally to existing and new public facilities. [L 1992, c 282, pt of §2; am L 1996, c 175, §1; am L 2001, c 235, §2]

§46-142.5 School impact districts; new building permit requirements.

No new residential development in a designated school impact district under chapter 302A shall be issued a residential building permit or condominium property regime building permit until the department of education provides written confirmation that the permit applicant has fulfilled its school impact fee requirements. This section shall only apply to new dwelling units. [L 2007, c 245, §3]

§46-143 Impact fee calculation.

(a) A county council or board considering the enactment or adoption of impact fees shall first approve a needs assessment study that shall identify the kinds of public facilities for which the fees shall be imposed. The study shall be prepared by an engineer, architect, or other qualified professional and shall identify service standard levels, project public facility capital improvement needs, and differentiate between existing and future needs.

(b) The data sources and methodology upon which needs assessments and impact fees are based shall be set forth in the needs assessment study.

(c) [2004 amendment retroactive to October 1, 2002. L 2004, c 155, §6.] The pro rata amount of each impact fee shall be based upon the development and actual capital cost of public facility expansion, or a reasonable estimate thereof, to be incurred.

(d) [2004 amendment retroactive to October 1, 2002. L 2004, c 155, §6.] An impact fee shall be substantially related to the needs arising from the development and shall not exceed a proportionate share of the costs incurred or to be incurred in accommodating the development. The following seven factors shall be considered in determining a proportionate share of public facility capital improvement costs:

(1) The level of public facility capital improvements required to appropriately serve a development, based on a needs assessment study that identifies:

(A) Deficiencies in existing public facilities;

(B) The means, other than impact fees, by which existing deficiencies will be eliminated within a reasonable period of time; and

(C) Additional demands anticipated to be placed on specified public facilities by a development;

(2) The availability of other funding for public facility capital improvements, including but not limited to user charges, taxes, bonds, intergovernmental transfers, and special taxation or assessments;

(3) The cost of existing public facility capital improvements;

(4) The methods by which existing public facility capital improvements were financed;

(5) The extent to which a developer required to pay impact fees has contributed in the previous five years to the cost of existing public facility capital improvements and received no reasonable benefit therefrom, and any credits that may be due to a development because of such contributions;

(6) The extent to which a developer required to pay impact fees over the next twenty years may reasonably be anticipated to contribute to the cost of existing public facility capital improvements through user fees, debt service payments, or other payments, and any credits that may accrue to a development because of future payments; and

(7) The extent to which a developer is required to pay impact fees as a condition precedent to the development of non-site related public facility capital improvements, and any offsets payable to a developer because of this provision.

(e) The impact fee ordinance shall contain a provision setting forth the process by which a developer may contest the amount of the impact fee assessed. [L 1992, c 282, pt of §2; am L 2001, c 235, §3; am L 2004, c 155, §3]

§46-144 Collection and expenditure of impact fees.

Collection and expenditure of impact fees assessed, imposed, levied, and collected for development shall be reasonably related to the benefits accruing to the development. To determine whether the fees are reasonably related, the impact fee ordinance or board rule shall provide that:

(1) Upon collection, the fees shall be deposited in a special trust fund or interest-bearing account. The portion that constitutes recoupment may be transferred to any appropriate fund;

(2) Collection and expenditure shall be localized to provide a reasonable benefit to the development. A county or board shall establish geographically limited benefit zones for this purpose; provided that zones shall not be required if a reasonable benefit can be otherwise derived. Benefit zones shall be appropriate to the particular public facility and the county or board. A county or board shall explain in writing and disclose at a public hearing reasons for establishing or not establishing benefit zones;

(3) Except for recoupment, impact fees shall not be collected from a developer until approval of a needs assessment study that sets out planned expenditures bearing a substantial relationship to the needs or anticipated needs created by the development;

(4) Impact fees shall be expended for public facilities of the type for which they are collected and of reasonable benefit to the development; and

(5) Within six years of the date of collection, the impact fees shall be expended or encumbered for the construction of public facility capital improvements that are consistent with the needs assessment study and of reasonable benefit to the development. [L 1992, c 282, pt of §2; am L 2001, c 235, §4]

§46-145 Refund of impact fees.

(a) If impact fees are not expended or encumbered within the period established in section 46-144, the county or the board shall refund to the developer or the developer's successor in title the amount of fees paid and any accrued interest. Application for a refund shall be submitted to the county or the board within one year of the date on which the right to claim arises. Any unclaimed refund shall be retained in the special trust fund or interest bearing account and be expended as provided in section 46-144.

(b) If a county or board seeks to terminate impact fee requirements, all unexpended or unencumbered funds shall be refunded as provided in subsection (a) and the county or board shall give public notice of termination and availability of refunds at least two times. All funds available for refund shall be retained for a period of one year at the end of which any remaining funds may be transferred to:

(1) The county's general fund and expended for any public purpose not involving water supply or service as determined by the county council; or

(2) The board's general fund and expended for any public purpose involving water supply or service as determined by the board.

(c) Recoupment shall be exempt from subsections (a) and (b). [L 1992, c 282, pt of §2; am L 1998, c 2, §14; am L 2001, c 235, §5]

§46-146 Time of assessment and collection of impact fees.

Assessment of impact fees shall be a condition precedent to the issuance of a grading or building permit and shall be collected in full before or upon issuance of the permit. [L 1992, c 282, pt of §2]

§46-147 Effect on existing ordinances.

This part shall not invalidate any impact fee ordinance existing on June 19, 1992. [L 1992, c 282, pt of §2]

§46-148 Transitions.

Any county requiring impact fees or imposing development exactions, in order to fund public facilities, shall incorporate fee requirements into their broader system of development and land use regulations in such a manner that developments, either collectively or individually, are not required to pay or otherwise contribute more than a proportionate share of public facility capital improvements. Development contributions or payments made under a development agreement, pursuant to section 46-123, are exempted from this requirement. [L 1992, c 282, pt of §2]

CHAPTER 264
HIGHWAYS

[PART VIII.] IMPACT FEES

Note: Part retroactive to October 1, 2002. L 2004, c 155, §6.

[§264-121] Definitions.

As used in this part, unless the context requires otherwise:

"Capital costs" means part or all of the cost for capital improvements. Capital costs may include costs to acquire right-of-way, plan, design, engineer, finance, and construct improvements including costs of management and consultant fees. Capital costs shall not include periodic maintenance and other operating costs.

~~"County" means a county having a population in excess of five hundred thousand.~~ [amended by SB 2901, sent to governor 5/8/06; effective 7/1/06]

"Department" means the department of transportation.

"Development" means any artificial change to real property that requires a county grading or building permit including but not limited to construction, expansion, enlargement, alteration, or erection of buildings or structures.

"Director" means the director of transportation.

"Impact fee" means an assessment on a development used to incrementally fund a fair share of the capital costs of public highway improvements reasonably needed to serve that development.

"State highway improvements" means capital improvements to the physical infrastructure of state highways. [L 2004, c 155, pt of §2]

[§264-122] Highway development special fund.

(a) There is established in the state treasury the highway development special fund to be administered by the department, into which shall be deposited:

(1) Transfers of county impact fees assessed under part VIII of chapter 46 and this part to pay for state highway improvements;

(2) Interest from investment of deposits; and

(3) Legislative and county appropriations.

(b) Moneys in the highway development special fund shall be used for the following purposes:

(1) Capital costs of qualifying proposed state highway improvements;

(2) Reevaluation of the need, geographic limitations, amount, and use of impact fees;

(3) Transfers to reimburse other special funds for expenditures which otherwise might have been funded with moneys in the highway development special fund;

(4) Transfers under sections 36-27 and 36-30;

(5) Refunds under section 264-125; and

(6) The department's costs to implement this part, including but not limited to costs to administer the highway development special fund.

(c) The department may establish accounts in the highway development special fund as necessary to implement this part and rules adopted by the department. [L 2004, c 155, pt of §2]

[§264-123] Authority to assess impact fees; needs assessment study.

(a) A county may assess, impose, levy, collect, and transfer to the department impact fees for any development pursuant to ordinances adopted under section 46-142 and this part, and the department is authorized to receive those funds for state highway improvements.

(b) Prior to the assessment, imposition, levy, collection, or transfer to the department of impact fees pursuant to this section, the director shall approve a needs assessment study that shall identify the kinds of state highway improvements for which the fees shall be imposed by the county pursuant to part VIII of chapter 46. [L 2004, c 155, pt of §2]

[§264-124 Impact fees; director's consent.]

Notwithstanding section 264-123, no county shall assess impact fees for state highway improvements without the director's consent. [L 2004, c 155, pt of §2]

[§264-125] Refund of impact fees to county.

Upon the request of a county, the department shall refund impact fees transferred to the highway development special fund which have not been expended or encumbered for purposes established under this part within six years after collection under part VIII of chapter 46. [L 2004, c 155, pt of §2]

[§264-126] Adoption of rules.

The department may adopt rules pursuant to chapter 91 to implement this part. [L 2004, c 155, pt of §2]

[§264-127] Limitations on actions.

A civil lawsuit contesting an action by the department or a county under this part or under part VIII of chapter 46 shall be filed within sixty calendar days after the date of the action.

Act 245, Session Laws of 2007, approved July 3, 2007
as modified by Act 188, Session Laws of 2010, effective July 1, 2010

Chapter 302A, Hawaii Revised Statutes
Part VI, Provisions Affecting Facilities
B. SCHOOL IMPACT FEES

§302A-1601 Findings. New residential developments within identified school impact districts create additional demand for public school facilities. As such, once school impact districts are identified, new residential developments shall be required to contribute toward the construction of new or expansion of existing public school facilities through:

(1) The land requirement, either through an in lieu fee or actual acreage (unless land is not required in the school impact district), based on each new residential development's proportionate share of the need to provide additional public school sites; and

(2) The construction requirement either through an in lieu fee or actual construction based on each new residential development's proportionate share of the need to construct additional school facilities.

A study commissioned by the State has identified the land dedication requirement that is consistent with proportionate fair-share principles and the net capital cost of school facilities, excluding land costs, that is consistent with proportionate fair-share principles.

The State determines that new residential developments within designated school impact districts shall provide land for schools or pay a fee in lieu of land proportionate to the impacts of the new residential development on existing school facilities. The State also determines that new residential developments within designated school impact districts shall also pay school construction cost component impact fees proportionate to their impacts.

In determining the amounts of land component impact fees and construction cost component impact fees, the intent of the school impact fee calculations is that new residential developments should not be charged for a higher level of service than is being charged to existing developments.

This subpart establishes the methodology for developers to provide their proportionate share of the land and the construction cost of new or expanded school facilities needed to serve new residential developments, as determined in sections 302A-1606 and 302A-1607, respectively."

§302A-1602 Definitions. As used in this subpart, the following terms shall have the following meanings unless the context indicates otherwise:

"Land area per student" means the area of land in acres required per student for a school site based on design standards for schools, which may include the actual school site size and the design enrollment of schools constructed within approximately the last ten years.

"Construction cost" means the net cost to construct a school, including without limitation, planning, design, engineering, grading, permits, construction, and construction and project management, but not including the cost to acquire land.

"Construction cost component impact fee" means ten per cent of the share of the construction cost for the required new school, the expansion of existing school facilities that is attributable to a specific new residential development, or both.

"Cost per student" means the average of actual school construction costs, expressed in current dollars, divided by the respective design enrollments, for schools constructed within approximately the last ten years.

"County" means the city and county of Honolulu, the county of Hawaii, the county of Kauai, and the county of Maui.

"Design enrollment" means the maximum number of students, or student capacity, a permanent school facility is designed to accommodate.

"Developer" means a person, corporation, organization, partnership, association, or other legal entity constructing, erecting, enlarging, altering, or engaging in any new residential development activity.

"Dwelling unit" or "unit" means a multi-family or single-family residential unit.

"Fee in lieu" means a fee determined pursuant to section 302A-1606 that is paid in lieu of the dedication of land.

"Land component" means a fee simple property that is vacant, suitable for a school site, and improved with infrastructure that is the total school area dedication requirement for a new residential development in a school impact district.

"Land component impact fee" means the land component, the fair market value of the land component, or any combination thereof that is attributed to a specific new residential development.

"Level of service" means the percentage of classrooms that are located in permanent structures, but not including classrooms located in portable buildings.

"Multi-family unit" means any dwelling unit other than a single family dwelling unit.

"New residential development" means new residential projects involving rezoned properties or parcels, current zoned parcels with or without buildings, and redevelopment projects. These projects include subdivisions and other forms of "lot only" developments (when the dwelling units will not be built by the developer), and developments that include single-family and multi-family units, condominiums, and additional or accessory dwelling units as defined by each county.

"Owner" means the owner of record of real property or the owner's authorized agent.

"Proportionate share" means the pro rata share of the school impact fee attributed to the specific new residential development based on the number of units in the development.

"Recent school site area averages" means the department's historical average acres for new elementary (K-5), middle (6-8), and high (9-12) schools. Based on historic schools constructed in the 1997 to 2007 period, the initial recent school site area averages are as follows:

	Land Area/school	**Enrollment/school**	**Land Area/student**
Elementary	12.5 acres	800 students	.0156 acres
Middle	16.5 acres	1,500 students	.0110 acres
High	49 acres	1,600 students	.0306 acres

"Revenue credit" means the state general excise tax revenues under chapter 237 that will be generated by a new dwelling unit and used to fund school capital facilities and pay for outstanding debt on existing facilities.

"School facilities" means the facilities owned or operated by the department, or the facilities included in the department of education capital budget or capital facilities plan.

"School impact district" means a geographic area designated by the board where an anticipated new residential development will create the need for one or more new schools or the expansion of one or more existing schools that are or will be located within the area and will primarily serve new dwelling units within the area.

"Single-family unit" means a detached dwelling unit not connected to any other dwelling unit, or a detached building containing two dwelling units.

"Single-family unit count" means the total single-family units planned for a proposed new residential development.

"Student generation rate" means the number of public school students generated by each multi-family and single-family unit when a residential development has matured and enrollment per unit no longer fluctuates significantly, or has substantially achieved a steady state. The student generation rate for a school impact district shall be based on analysis of the existing number of residential units and public school students in an area, and the student generation rates of comparable projects and areas."

§302A-1603 Applicability and exemptions.

(a) Except as provided in subsection (b), any person who seeks to develop a new residential development within a designated school impact district requiring:

(1) A county subdivision approval;
(2) A county building permit; or
(3) A condominium property regime approval for the project,

shall be required to fulfill the land component impact fee or fee in lieu requirement and construction cost component impact fee requirement of the department, including all government housing projects.

(b) The following shall be exempt from this section:

(1) Any form of housing permanently excluding school-aged children, with the necessary covenants or declarations of restrictions recorded on the property;

(2) Any form of housing that is or will be paying the transient accommodations tax under chapter 237D;

(3) All nonresidential development; and

(4) Any development with an executed education contribution agreement or other like document with the department for the contribution of school sites or payment of fees for school land or school construction."

§302A-1604 Designation of school impact districts.

(a) The board shall designate a school impact district for school impact fees only after holding at least one public hearing in the area proposed for the school impact district. The written analysis, prepared in accordance with subsection (b), shall be made available to the public at least thirty days prior to the public hearing. Notice of the public hearing shall be made as provided in section 1-28.5. The notice shall include a map of the proposed school impact district and the date, time, and place of the public hearing.

(b) Prior to the designation of a school impact district, the department shall prepare a written analysis that contains the following:

(1) A map and legend describing the boundaries of the proposed school impact district area, which may range from one school to one or more high school complexes, as well as maps and legends describing surrounding districts and school enrollments at existing school facilities in and around the school impact district;

(2) The need to construct new or expand existing school facilities in the proposed school impact district area within the next twenty-five years to accommodate projected growth in the area based on various state and county land use, demographics, growth, density, and other applicable historical data projections and plans;

(3) An analysis to determine appropriate student generation rates by dwelling unit type for all new residential developments in the school impact district area to provide the basis for determining the steady state enrollment generated by new residential developments that will need to be accommodated. The analysis shall also consider enrollment at existing school facilities, in and around the school impact district;

(4) Student generation rates, based on full build-out of the developments when student generation rates are anticipated to be in a steady state mode;

(5) An analysis to estimate the number of students generated by all new residential developments in the school impact district at the point in time when the total enrollment from these developments is anticipated to peak. This information is required for or related to the determination of the impact fee, and will provide the basis for determining the maximum enrollment generated by new residential developments that will need to be accommodated in both permanent facilities and portable buildings;

(6) Calculation of the current statewide level of service;

(7) An analysis of appropriate school land area, or other appropriate state lands, and enrollment capacity, which may include nontraditional (i.e., mid-rise or high-rise structures) facilities to accommodate the need for public school facilities in high-growth areas within existing urban developments;

(8) A statewide classroom use report, which shall include the following:

(A) Current design enrollment per school (i.e., maximum number of students per classroom per school);

(B) Current total student enrollment per school; and

(C) Current number of classrooms not being used for active teaching; and

(9) An analysis including the advantages and disadvantages of making more efficient use of existing or underused assets in the school impact district through school redistricting.

The analyses specified in paragraphs (3) and (6) shall be periodically updated pursuant to section 302A- [XX] (b)."

§302A-1605 Impact fee analysis. Upon designation of a school impact district, the department shall prepare an impact fee analysis that shall include, at a minimum, an analysis including the advantages and disadvantages of potential changes to statewide school site areas and design enrollment standards that may be appropriate for application in the particular school impact district. This analysis may include, for example, non-traditional facilities such as mid-rise or high-rise structures in existing urban areas where new residential developments are expected to generate the need for new school construction.

§302A-1606 Land component impact fee; determining the amount of land or fee in lieu.

(a) The school land area requirements for new residential developments in a school impact district shall be based on recent school site area averages, student generation rates, and the number of dwelling units in the new residential development.

(b) The following formula shall be used to determine the total school land area requirement for each individual new residential development in a school impact district:

Elementary school student generation rate per single-family unit (x) number of single-family units (x) recent school site area average for the land area per elementary school student;

plus (+)

Elementary school student generation rate per multi-family unit (x) number of multi-family units (x) recent school site area average for the land area per elementary school student;

plus (+)

Middle school student generation rate per single-family unit (x) number of single-family units (x) recent school site area average for the land area per middle school student;

plus (+)

Middle school student generation rate per multi-family unit (x) number of multi-family units (x) recent school site area average for the land area per middle school student;

plus (+)

High school student generation rate per single-family unit (x) number of single-family units (x) recent school site area average for the land area per high school student;

plus (+)

High school student generation rate per multi-family unit (x) number of multi-family units (x) recent school site area average for the land area per high school student;

equals (=)

Total school land requirement.

(c) The procedure for determining whether the dedication of land is required or a payment of a fee in lieu is required for a new school facility or to satisfy the land component impact fee shall be as follows:

(1) A new residential development with fifty or more units shall include a written agreement between the owner or developer of the property and the department, executed prior to issuance of a building permit, under which the owner or developer has:

(A) Agreed to designate an area to be dedicated for one or more schools for the development, subject to approval by the department; or

(B) Agreed to pay to the department, at a time specified in the agreement, a fee in lieu of land dedication;

(2) A new residential development with less than fifty units shall include a written agreement between the owner or the developer of the property and the department, executed prior to the issuance of the building permit, under which the owner or developer has agreed to a time specified for payment for the fee in lieu;

(3) Prior to approval of any change of zoning, subdivision, or any other approval for a:

(A) Residential development with fifty or more units; or

(B) Condominium property regime development of fifty or more units,

the department shall notify the approving agency of its determination on whether it will require the development to dedicate land, pay a fee in lieu thereof, or a combination of both for the provision of new school facilities;

(4) The department's determination to require land dedication or the payment of a fee in lieu, or a combination of both, shall be guided by the following criteria:

(A) The topography, geology, access, value, and location of the land available for dedication;

(B) The size and shape of the land available for dedication;

(C) The location of existing or proposed schooling facilities; and

(D) The availability of infrastructure;

(5) The determination of the department as to whether lands shall be dedicated or whether a fee in lieu shall be paid, or a combination of both, shall be final;

(6) When land dedication is required, the land shall be conveyed to the State upon completion of the subdivision improvements and any offsite infrastructure necessary to serve the land; and

(7) When the payment of a fee in lieu is required, the fee in lieu shall be paid based on the terms contained in the written agreement.

(d) In determining the value per acre for any new residential development, the fee simple value of the land identified for the new or expanded school facility shall be based on the appraised fair market value of improved, vacant land, zoned for residential use, and serviced by roads, utilities, and drainage. An appraiser, licensed pursuant to chapter 466K, who is selected and paid for by the developer, shall determine the value of the land. If the department does not agree with the developer's appraisal, the department may engage another licensed appraiser at its own expense, and resolve, through negotiation between the two appraisers, a fair market value. If neither party agrees, the first two appraisers shall select the third appraiser, with the cost of the third appraisal being shared equally by the department and the developer, and the third appraisal shall be binding on both parties.

(e) The developer or owner of new residential developments of fifty or more units shall either pay the fee in lieu based on the land value as determined in subsection (d) or convey appropriate acreage as determined in subsection (b). When conveying the fee simple interest for the new or expanded school facility, the developers shall be credited the difference between the fair market fee simple value of the property and the developers' proportionate share of the value of the land as determined in subsection (d) against any construction cost component impact fee. Any excess may be transferred and used as credit against any future land or construction cost requirements on any other development of the State.

(f) The dollar amount of the fee in lieu shall be determined using the following formula:

Acres of land subject to the fee in lieu, as determined under subsection (c) multiplied by the value per acre of land determined pursuant to subsection (d)."

§302A-1607 Construction cost component impact fee; determining the amount of the fee.

(a) The construction cost component impact fees shall be calculated using the following factors:

(1) For new school construction, the cost per student for each school type (elementary, middle or intermediate, and high school) shall be based on the ten-year average construction of a new school facility using the Honolulu assessment district in 2006 as the base. Costs for construction completed earlier than 2006 shall be escalated to 2006 using the engineering news-record construction cost index;

(2) For expansion of existing school facilities, the cost per student for each school type (elementary, middle or intermediate, and high school) is based on the ten-year average construction of whatever components are required to expand the school using the Honolulu assessment district in 2006 as the base;

(3) The cost per student in other assessment districts shall be the cost per student in the Honolulu assessment district multiplied by the appropriate cost factor in subsection (d). At least every three years, the department shall update the cost per student based on the construction of a new permanent school facility, and present the written analysis to the board for review; and

(4) Student generation rates, as defined in section 302A-1602.

(b) The student generation rate for each school type (elementary, middle or intermediate, and high school) shall be multiplied by the cost per student for each school type (elementary, middle or intermediate, and high school) to determine the cost per dwelling unit in the development.

(c) The construction cost component impact fee shall be based on recent public school construction costs. The 1997 to 2007 period school construction costs per student, adjusted for both the year 2007 and for the Honolulu assessment district, are as follows:

(1) Elementary schools: $35,357 per student;
(2) Middle and intermediate schools: $36,097 per student; and
(3) High schools: $64,780 per student.

The costs per student for other assessment districts shall be determined by multiplying the Honolulu assessment district costs per student by the applicable cost factor in subsection (d). These costs per student shall be updated at least every three years, pursuant to the provisions in section 302A-[XX].

(d) The State shall be divided into the following twenty-six geographically limited cost districts, and the cost factors listed for each cost district shall be applied to the calculation of school construction costs per unit pursuant to subsection (c):

Cost District	School District	Cost Factor
Honolulu	Honolulu	1.00
Ewa	Leeward/Central	1.00
Wahiawa	Central	1.05
Waialua	Central	1.10
Koolaupoko	Windward	1.00
Koolauloa	Windward	1.00
Waianae	Leeward	1.10
Hilo	Hawaii	1.15
Puna	Hawaii	1.20
Kona	Hawaii	1.20
Hamakua	Hawaii	1.20
South Kohala	Hawaii	1.20
North Kohala	Hawaii	1.25
Pohakuloa	Hawaii	1.25
Kau	Hawaii	1.30
Wailuku	Maui	1.15
Makawao	Maui	1.25
Lahaina	Maui	1.30
Hana	Maui	1.35
Molokai	Molokai	1.30
Lanai	Lanai	1.35
Lihue	Kauai	1.15
Koloa	Kauai	1.20
Kawaihau	Kauai	1.20
Waimea	Kauai	1.25
Hanalei	Kauai	1.25

(e) At least every three years, and concurrent with any update of the costs per student, the department shall update the revenue credits and present the written analysis to the board for review. The calculation of revenue credits shall be reviewed and calculated recognizing that the impact fee shall be set at one hundred per cent of the fair market value of the land and ten per cent of the total school construction cost.

(f) The construction cost component of the impact fees per dwelling unit shall be ten per cent of the amounts calculated according to the following formula:

Cost per dwelling unit from subsection (b) minus any amount by which the revenue credit per dwelling unit from subsection (e) exceeds ninety per cent of the per unit construction cost.

(g) The amount of the fee shall be adjusted from the date it was determined to the date it is paid using the engineering news-record construction cost index, or an equivalent index if that index is discontinued.

(h) Any new residential development shall be required to obtain a written agreement executed between the owner or developer of the property and the department, prior to the issuance of a building permit, under which the owner or developer has agreed to a time specified for payment of its construction cost component impact fee.

§302A- 1608 Accounting and expenditure requirements.

(a) Each designated school impact district shall be a separate benefit district. Fees collected within each school impact district shall be spent only within the same school impact district for the purposes collected.

(b) Land dedicated by the developer shall be used only as a site for the construction of one or more new schools or for the expansion of existing school facilities. If the land is never used for the school facility, it shall be returned to the developer, or the developer's successor in interest. Once used, the land may be sold, with the proceeds used to acquire land for school facilities in the same school impact district.

(c) If the land is not used for a school facility within twenty years of its dedication, it shall be returned to the developer, or the developer's successor in interest.

(d) Once used for school facilities, all or part of the land may be later sold. Proceeds from the sale shall be used to acquire land for school facilities in the same school impact district.

(e) Fee in lieu funds may be used for school site land acquisition and related expenses, including surveying, appraisals, and legal fees. Fee in lieu funds shall not be used for the maintenance or operation of existing schools in the district, construction costs, including architectural, permitting, or financing costs, or for administrative expenses.

(f) Construction cost component impact fees shall be used only for the costs of new school facilities that expands the student capacity of existing schools or adds student capacity in new schools. Construction cost component impact fees may not be used to replace an existing school located within the same school impact district, either on the same site or on a different site.

(g) Eligible construction costs include planning, engineering, architectural, permitting, financing, and administrative expenses, and any other capital equipment expenses pertaining to educational facilities.

(h) Construction cost component impact fees shall not be expended for:

(1) The maintenance or operation of existing schools in the district; or
(2) Portable or temporary facilities.

(i) If a closure, demolition, or conversion of an existing permanent department facility within a school impact district that has the effect of reducing student capacity occurs, an amount of new student capacity in permanent buildings equivalent to the lost capacity shall not be funded with school impact fees.

(j) Fees in lieu, proceeds from the sale of all or part of an existing school site that has been dedicated by a developer pursuant to the requirements of this subpart, and construction cost component impact fees shall be expended or encumbered within twenty years of the date of collection. Fees shall be considered spent or encumbered on a first-in, first-out basis. An expenditure plan for all collected impact fees shall be incorporated into the annual budget process of the department and subject to legislative approval of the budget.

§302A-1609 Refunds of fees. If a fee in lieu or a construction cost component impact fee is not expended within twenty years of the date of collection, the department shall either:

(1) Refund to the developer, or the developer's successor in interest, the amount of the fee in lieu paid and any interest accrued thereon; or

(2) Recommit part or all of the fees for another twenty-year period for construction of new schools in the school impact district, as authorized by the developer or the developer's successor.

§302A-1610 Credits for land dedication.

(a) Any owner of a development subject to the land component impact fee requirements pursuant to this subpart may apply for credit against any similar dedication or payment accepted and received by the department for the project; provided that any such owner who dedicates more land for school facilities than is required for the development shall receive credit for the excess dedicated land area.

(b) Any credit provided for under this section shall be based on the value determined in the manner provided under section 302A-1606.

(c) Excess credits for land contributions prior to July 1, 2010, that are in excess of a developer's requirement under this subpart shall be based on the determined value of the excess dedication; provided that the credit amount shall not exceed the value of the dedication or fee in lieu required under this subpart.

(d) In addition to or instead of applying credits to future developments, the department may execute with an owner of credits an agreement to provide for partial or full reimbursement from the school impact fee payments collected from other developers within the same school impact district. The reimbursements shall not exceed the amount of the fee revenues available in the account for that school impact district.

§302A-1611 Credits for excess contributions or advance payment of required construction cost component impact fees.

(a) Any owner of a development subject to the construction cost component impact fee requirements pursuant to this subpart shall receive credit for any similar contribution, payment, or construction of public school facilities accepted and received by the department for the portion of the development that is in excess of the impact fee required under this subpart for that development. No credit shall be authorized against the impact fees in lieu.

(b) A credit may be applied only against school impact fees that would otherwise be due for new residential developments for which the payment or contribution was agreed to in a written educational contribution agreement.

(c) Excess contribution credit may be applied to the construction cost component impact fee requirement for any future development by the same owner in the same school impact district, or with the written approval of the owner of the credit, to any future development by a different owner in the same school impact district.

(d) In addition to or instead of applying the credits to future developments, the department may execute with an owner of the credits an agreement to provide for partial or full reimbursement from the impact fee payments collected from other developers within the same school impact district. The reimbursements shall not exceed the amount of the impact fee revenues available in the account for that school impact district.

(e) Any owner of a development shall receive credit for any part of its required construction cost component impact fee that, with the approval of the department, is paid in advance of the time specified in the written agreement executed in accordance with section 302A-1607(h). The department shall maintain an accounting of the amount of the credit applicable to the new residential development and shall reduce the amount of the credit by the amount of the impact fees that would otherwise be due for each building permit issued for the new residential development. After the credit balance is exhausted, no additional credits shall be applied to subsequent building permits issued within the new residential development.

(f) If private construction of school facilities is proposed by a developer after July 1, 2010, if the proposed construction is acceptable to the department, and if the value of the proposed construction exceeds the total impact fees that would be due from the development, the department shall execute with the developer an agreement to provide reimbursement for the excess credit from the impact fees collected from other developers within the same benefit district. For the purposes of this section, the private construction of school facilities is a "public work" pursuant to chapter 104.

§302A-[XX] Use of data reflecting recent conditions in impact fee calculations. [Note: Act 188 said this new section was to be numbered appropriately]

(a) Every three years beginning in 2010, the department shall concurrently update the following:

(1) School site area averages, using the total school land requirement for each individual in a school impact district as calculated pursuant to section 302A-1606(b);

(2) Elementary, middle or intermediate, and high school permanent facility construction costs per student, as provided under section 302A-1607; and

(3) Revenue credit per unit figures provided pursuant to section 302A-1607(e).

(b) Every three years following the initial determinations made pursuant to section 302A-1604, the department shall update the following:

(1) Student generation rates for each established school impact district; and

(2) The statewide level of service.

(c) Every three years beginning in 2010, the department shall, where appropriate, update the list of cost factors for the twenty-six geographically limited cost districts, as provided in section 302A-1607(d), by incorporating any changes to the cost factors that have been made by the department of accounting and general services.

(d) If any data update required by this section is not completed within the specified time, the most current data shall be used until the update is completed."

SECTION 3. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§46-142.5 School impact fees. No new residential development in a designated school impact district under chapter 302A shall be issued a residential building permit or condominium property regime building permit until the department of education provides written confirmation that the permit applicant has fulfilled its school impact fee requirements. This section shall only apply to new dwelling units."

SECTION 4. Implementation and interim procedures. Recognizing the need for more details to fully implement this Act, and the fact that development is a continuous and ongoing process, the legislature finds that implementation shall be as follows:

(1) Within one year of the effective date of this Act:

(A) The department of education shall identify school impact districts that shall include an assessment of high growth areas and school facility utilization throughout the State; and

(B) The department of education shall assess, analyze, and develop an appropriate methodology to determine future school facility needs in new, build-out (existing parcels with or without building), and in-fill developments;

(2) During this interim period, developers who do not have an existing executed education contribution agreement or other like document with the department of education for the contribution of school sites or payment of fees for school land or school construction with the department may:

(A) Use the methodology outlined in this Act to determine land and construction cost components of the school impact fees for their developments based on student generation rates appropriate for their respective developments. These student generation rates shall be based on a full build-out and a reasonable expectation of permanent school facilities needed to accommodate a development at a steady state. These calculations shall be made in coordination with the department of education and subject to its approval; and

(B) Assist the department of education with temporary facility needs, separate and apart from impact fees for permanent facilities;

and

(3) During the interim period, the department of education shall assess other funding sources for the construction of new schools and the expansion of existing schools, such as a dedicated percentage of the conveyance tax that would be applied to all real estate sales transactions and the proceeds from which may be deposited into a dedicated funding source for public school construction.

Idaho Development Impact Fee Act

[downloaded October 2, 2008]

TITLE 67: STATE GOVERNMENT AND STATE AFFAIRS
CHAPTER 82: DEVELOPMENT IMPACT FEES

[with amendments from HB 607, signed by governor 3/27/02: This act shall be in full force and effect on and after July 1,2002; provided however, that governmental agencies using an alternative methodology under the provisions of section 67-8204(15)(b), Idaho Code, as said section existed immediately prior to the effective date of this act, shall have until March, 2003, to implement a capital improvement plan-based impact fee program pursuant to section 67-8204, Idaho Code, as amended pursuant to this act.]

67-8201. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Development Impact Fee Act."

67-8202. PURPOSE. The legislature finds that an equitable program for planning and financing public facilities needed to serve new growth and development is necessary in order to promote and accommodate orderly growth and development and to protect the public health, safety and general welfare of the citizens of the state of Idaho. It is the intent by enactment of this chapter to:

(1) Ensure that adequate public facilities are available to serve new growth and development;

(2) Promote orderly growth and development by establishing uniform standards by which local governments may require that those who benefit from new growth and development pay a proportionate share of the cost of new public facilities needed to serve new growth and development;

(3) Establish minimum standards for the adoption of development impact fee ordinances by governmental entities;

(4) Ensure that those who benefit from new growth and development are required to pay no more than their proportionate share of the cost of public facilities needed to serve new growth and development and to prevent duplicate and ad hoc development requirements; and

(5) Empower governmental entities which are authorized to adopt ordinances to impose development impact fees.

67-8203. DEFINITIONS. As used in this chapter:

(1) "Affordable housing" means housing affordable to families whose incomes do not exceed eighty percent (80%) of the median income for the service area or areas within the jurisdiction of the governmental entity.

(2) "Appropriate" means to legally obligate by contract or otherwise commit to use by appropriation or other official act of a governmental entity.

(3) "Capital improvements" means improvements with a useful life of ten (10) years or more, by new construction or other action, which increase the service capacity of a public facility.

(4) "Capital improvement element" means a component of a comprehensive plan adopted pursuant to chapter 65, title 67, Idaho Code, which component meets the requirements of a capital improvements plan pursuant to this chapter.

(5) "Capital improvements plan" means a plan adopted pursuant to this chapter that identifies capital improvements for which development impact fees may be used as a funding source.

(6) "Developer" means any person or legal entity undertaking development, including a party that undertakes the subdivision of property pursuant to sections 50-1301 through 50-1334, Idaho Code.

(7) "Development" means any construction or installation of a building or structure, or any change in use of a building or structure, or any change in the use, character or appearance of land, which creates additional demand and need for public facilities or the subdivision of property that would permit any change in the use, character or appearance of land. As used in this chapter, "development" shall not include activities that would otherwise be subject to payment of the development impact fee if such activities are undertaken by a taxing district, as defined in section 63-201, Idaho Code, in the course of carrying out the taxing district's public responsibilities, unless the adopted impact fee ordinance expressly includes taxing districts as being subject to development impact fees.

(8) "Development approval" means any written authorization from a governmental entity which authorizes the commencement of a development.

(9) "Development impact fee" means a payment of money imposed as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve development. This term is also referred to as an impact fee in this chapter. The term does not include the following:

> (a) A charge or fee to pay the administrative, plan review, or inspection costs associated with permits required for development;
>
> (b) Connection or hookup charges;
>
> (c) Availability charges for drainage, sewer, water, or transportation charges for services provided directly to the development; or
>
> (d) Amounts collected from a developer in a transaction in which the governmental entity has incurred expenses in constructing capital improvements for the development if the owner or developer has agreed to be financially responsible for the construction or installation of the capital improvements, unless a written agreement is made pursuant to section 67-8209(3), Idaho Code, for credit or reimbursement.

(10) "Development requirement" means a requirement attached to a developmental approval or other governmental action approving or authorizing a particular development project including, but not limited to, a rezoning, which requirement compels the payment, dedication or contribution of goods, services, land, or money as a condition of approval.

(11) "Extraordinary costs" means those costs incurred as a result of an extraordinary impact.

(12) "Extraordinary impact" means an impact which is reasonably determined by the governmental entity to: (i) result in the need for system improvements, the cost of which will significantly exceed the sum of the development impact fees to be generated from the project or the sum agreed to be paid pursuant to a development agreement as allowed by section 67-8214(2), Idaho Code, or (ii) result in the need for system improvements which are not identified in the capital improvements plan.

(13) "Fee payer" means that person who pays or is required to pay a development impact fee.

(14) "Governmental entity" means any unit of local government that is empowered in this enabling legislation to adopt a development impact fee ordinance.

(15) "Impact fee." See development impact fee.

(16) "Land use assumptions" means a description of the service area and projections of land uses, densities, intensities, and population in the service area over at least a twenty (20) year period.

(17) "Level of service" means a measure of the relationship between service capacity and service demand for public facilities.

(18) "Manufactured home" means a structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure which meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under 42 U.S.C. 5401, et seq.

(19) "Modular building" is as defined in section 39-4301, Idaho Code.

(20) "Present value" means the total current monetary value of past, present, or future payments, contributions or dedications of goods, services, materials, construction or money.

(21) "Project" means a particular development on an identified parcel of land.

(22) "Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project.

(23) "Proportionate share" means that portion of the cost of system improvements determined pursuant to section 67-8207, Idaho Code, which reasonably relates to the service demands and needs of the project.

(24) "Public facilities" means:

(a) Water supply production, treatment, storage and distribution facilities;

(b) Wastewater collection, treatment and disposal facilities;

(c) Roads, streets and bridges, including rights-of-way, traffic signals, landscaping and any local components of state or federal highways;

(d) Storm water collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;

(e) Parks, open space and recreation areas, and related capital improvements; and

(f) Public safety facilities, including law enforcement, fire, emergency medical and rescue and street lighting facilities.

(25) "Recreational vehicle" means a vehicular type unit primarily designed as temporary quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.

(26) "Service area" means any defined geographic area identified by a governmental entity or by intergovernmental agreement in which specific public facilities provide service to development within the area defined, on the basis of sound planning or engineering principles or both.

(27) "Service unit" means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements.

(28) "System improvements," in contrast to project improvements, means capital improvements to public facilities which are designed to provide service to a service area including, without limitation, the type of improvements described in section 50-1703, Idaho Code.

(29) "System improvement costs" means costs incurred for construction or reconstruction of system improvements, including design, acquisition, engineering and other costs attributable thereto, and also including, without limitation, the type of costs described in section 50-1702(h), Idaho Code, to provide additional public facilities needed to serve new growth and development. For clarification, system improvement costs do not include:

> (a) Construction, acquisition or expansion of public facilities other than capital improvements identified in the capital improvements plan;
>
> (b) Repair, operation or maintenance of existing or new capital improvements;
>
> (c) Upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
>
> (d) Upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;
>
> (e) Administrative and operating costs of the governmental entity unless such costs are attributable to development of the capital improvement plan, as provided in section 67-8208, Idaho Code; or
>
> (f) Principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the governmental entity to finance capital improvements identified in the capital improvements plan.

67-8204. MINIMUM STANDARDS AND REQUIREMENTS FOR DEVELOPMENT IMPACT FEES ORDINANCES. Governmental entities which comply with the requirements of this chapter may impose by ordinance development impact fees as a condition of development approval on all developments.

(1) A development impact fee shall not exceed a proportionate share of the cost of system improvements determined in accordance with section 67-8207, Idaho Code. Development impact fees shall be based on actual system improvement costs or reasonable estimates of such costs.

(2) A development impact fee shall be calculated on the basis of levels of service for public facilities adopted in the development impact fee ordinance of the governmental entity that are applicable to existing development as well as new growth and development. The construction, improvement, expansion or enlargement of new or existing public facilities for which a development impact fee is imposed must be attributable to the capacity demands generated by the new development.

(3) A development impact fee ordinance shall specify the point in the development process at which the development impact fee shall be collected. The development impact fee may be collected no earlier than the commencement of construction of the development, or the issuance of a building permit or a manufactured home installation permit, or as may be agreed by the developer and the governmental entity.

(4) A development impact fee ordinance shall be adopted in accordance with the procedural requirements of section 67-8206, Idaho Code.

(5) A development impact fee ordinance shall include a process whereby the governmental agency shall allow the developer, upon request by the developer, to provide a written individual assessment of the proportionate share of development impact fees under the guidelines established by this chapter which shall be set forth in the ordinance. The individual assessment process shall permit consideration of studies, data, and any other relevant information submitted by the developer to adjust the amount of the fee. The decision by the governmental agency on an application for an individual assessment shall include an explanation of the calculation of the impact fee, including an explanation of factors considered under section 67-8207, Idaho Code, and shall specify the system improvement(s) for which the impact fee is intended to be used.

(6) A development impact fee ordinance shall provide a process whereby a developer shall receive, upon request, a written certification of the development impact fee schedule or individual assessment for a particular project, which shall establish the development impact fee so long as there is no material change to the particular project as identified in the individual assessment application, or the impact fee schedule. The certification shall include an explanation of the calculation of the impact fee including an explanation of factors considered under section 67-8207, Idaho Code. The certification shall also specify the system improvement(s) for which the impact fee is intended to be used.

(7) A development impact fee ordinance shall include a provision for credits in accordance with the requirements of section 67-8209, Idaho Code.

(8) A development impact fee ordinance shall include a provision prohibiting the expenditure of development impact fees except in accordance with the requirements of section 67-8210, Idaho Code.

(9) A development impact fee ordinance may provide for the imposition of a development impact fee for system improvement costs incurred subsequent adoption of the ordinance to the extent that new growth and development will be served by the system improvements.

(10) A development impact fee ordinance may exempt all or part of a particular development project from development impact fees provided that such project is determined to create affordable housing, provided that the public policy which supports the exemption is contained in the governmental entity's comprehensive plan and provided that the exempt development's proportionate share of system improvements is funded through a revenue source other than development impact fees.

(11) A development impact fee ordinance shall provide that development impact fees shall only be spent for the category of system improvements for which the fees were collected and either within or for the benefit of the service area in which the project is located.

(12) A development impact fee ordinance shall provide for a refund of development impact fees in accordance with the requirements of section 67-8211, Idaho Code.

(13) A development impact fee ordinance shall establish for a procedure for timely processing of applications for determination by the governmental entity regarding development impact fees applicable to a project, individual assessment of development impact fees, credits or reimbursements to be allowed or paid under section 67-8209, Idaho Code, and extraordinary impact.

(14) A development impact fee ordinance shall specify when an application for an individual assessment of development impact fees shall be permitted to be made by a developer or fee payer. An application for an individual assessment of development impact fees shall be permitted sufficiently in advance of the time that the developer or fee payer may seek a building permit or related permits so that the issuance of a building permit or related permits will not be delayed.

(15) A development impact fee ordinance shall provide for appeals regarding development impact fees in accordance with the requirements of section 67-8212, Idaho Code.

(16) A development impact fee ordinance must provide a detailed description of the methodology by which costs per service unit are determined. The development impact fee per service unit may not exceed the amount determined by dividing the costs of the capital improvements described in section 67-8208(1)(f), Idaho Code, by the total number of projected service units described in section 67-8208(1)(g), Idaho Code. If the number of new service units projected over a reasonable period of time is less than the total number of new service units shown by the approved land use assumptions at full development of the service area, the maximum impact fee per service unit shall be calculated by dividing the costs of the part of the capital improvements necessitated by and attributable to the projected new service units described in section 67-8208(1)(g), Idaho Code, by the total projected new service units described in that section.

(17) A development impact fee ordinance shall include a schedule of development impact fees for various land uses per unit of development. The ordinance shall provide that a developer shall have the right to elect to pay a project's proportionate share of system improvement costs by payment of development impact fees according to the fee schedule as full and complete payment of the development project's proportionate share of system improvement costs, except as provided in section 67-8214(3), Idaho Code.

(18) After payment of the development impact fees or execution of an agreement for payment of development impact fees, additional development impact fees or increases in fees may not be assessed unless the number of service units increases or the scope or schedule of the development changes. In the event of an increase in the number of service units or schedule of the development changes, the additional development impact fees to be imposed are limited to the amount attributable to the additional service units or change in scope of the development.

(19) No system for the calculation of development impact fees shall be adopted which subjects any development to double payment of impact fees.

(20) A development impact fee ordinance shall exempt from development impact fees the following activities:

> (a) Rebuilding the same amount of floor space of a structure which was destroyed by fire or other catastrophe, providing the structure is rebuilt and ready for occupancy within two (2) years of its destruction;
>
> (b) Remodeling or repairing a structure which does not increase the number of service units;
>
> (c) Replacing a residential unit, including a manufactured home, with another residential unit on the same lot, provided that the number of service units does not increase;
>
> (d) Placing a temporary construction trailer or office on a lot;
>
> (e) Constructing an addition on a residential structure which does not increase the number of service units; and
>
> (f) Adding uses that are typically accessory to residential uses, such as tennis courts or clubhouse, unless it can be clearly demonstrated that the use creates a significant impact on the capacity of system improvements.

(21) A development impact fee will be assessed for installation of a modular building, manufactured home or recreational vehicle unless the fee payer can demonstrate by documentation such as utility bills and tax records, either:

(a) That a modular building, manufactured home or recreational vehicle was legally in place on the lot or space prior to the effective date of the development impact fee ordinance; or

(b) That a development impact fee has been paid previously for the installation of a modular building, manufactured home or recreational vehicle on that same lot or space.

(22) A development impact fee ordinance shall include a process for dealing with a project which has extraordinary impacts.

(23) A development impact fee ordinance shall provide for the calculation of a development impact fee in accordance with generally accepted accounting principles. A development impact fee shall not be deemed invalid because payment of the fee may result in an incidental benefit to owners or developers within the service area other than the person paying the fee.

(24) A development impact fee ordinance shall include a description of acceptable levels of service for system improvements.

(25) Any provision of a development impact fee ordinance that is inconsistent with the requirements of this chapter shall be null and void and that provision shall have no legal effect. A partial invalidity of a development impact fee ordinance shall not affect the validity of the remaining portions of the ordinance that are consistent with the requirements of this chapter.

67-8204A. INTERGOVERNMENTAL AGREEMENTS. Governmental entities as defined in section 67-8203(14), Idaho Code, which are jointly affected by development are authorized to enter into intergovernmental agreements with each other or with highway districts for the purpose of developing joint plans for capital improvements or for the purpose of agreeing to collect and expend development impact fees for system improvements, or both, provided that such agreement complies with any applicable state laws. Governmental entities are also authorized to enter into agreements with the Idaho transportation department for the expenditure of development impact fees pursuant to a developer's agreement under section 67-8214, Idaho Code.

67-8205. DEVELOPMENT IMPACT FEE ADVISORY COMMITTEE.

(1) Any governmental entity which is considering or which has adopted a development impact fee ordinance, shall establish a development impact fee advisory committee.

(2) The development impact fee advisory committee shall be composed of not fewer than five (5) members appointed by the governing authority of the governmental entity. Two (2) or more members shall be active in the business of development, building or real estate. An existing planning or planning and zoning commission may serve as the development impact fee advisory committee if the commission includes two (2) or more members who are active in the business of development, building or real estate; otherwise, two (2) such members who are not employees or officials of a governmental entity shall be appointed to the committee.

(3) The development impact fee advisory committee shall serve in an advisory capacity and is established to:

(a) Assist the governmental entity in adopting land use assumptions;

(b) Review the capital improvements plan, and proposed amendments, and file written comments;

(c) Monitor and evaluate implementation of the capital improvements plan;

(d) File periodic reports, at least annually, with respect to the capital improvements plan and report to the governmental entity any perceived inequities in implementing the plan or imposing the development impact fees; and

(e) Advise the governmental entity of the need to update or revise land use assumptions, capital improvements plan and development impact fees.

(4) The governmental entity shall make available to the advisory committee, upon request, all financial and accounting information, professional reports in relation to other development and implementation of land use assumptions, the capital improvements plan and periodic updates of the capital improvements plan.

67-8206. PROCEDURE FOR THE IMPOSITION OF DEVELOPMENT IMPACT FEES.

(1) A development impact fee shall be imposed by a governmental entity in compliance with the provisions set forth in this section.

(2) A capital improvements plan shall be developed in coordination with the development impact fee advisory committee utilizing the land use assumptions most recently adopted by the appropriate land use planning agency or agencies.

(3) A governmental entity that seeks to consider adoption, amendment, or repeal of a capital improvements plan shall hold at least one (1) public hearing. The governmental entity shall publish a notice of the time, place and purpose of the hearing or hearings not fewer than fifteen (15) nor more than thirty (30) days before the scheduled date of the hearing, in a newspaper of general circulation within the jurisdiction of the governmental entity. Such notices shall also include a statement that the governmental entity shall make available to the public, upon request, the following: proposed land use assumptions, a copy of the proposed capital improvements plan or amendments thereto, and a statement that any member of the public affected by the capital improvements plan or amendments shall have the right to appear at the public hearing and present evidence regarding the proposed capital improvements plan or amendments. The governmental entity shall send notice of the intent to hold a public hearing by mail to any person who has requested in writing notification of the hearing date at least fifteen (15) days prior to the hearing date, provided that the governmental entity may require that any person making such request renew the request for notification, not more frequently than once each year, in accordance with a schedule determined by the governmental entity, in order to continue receiving such notices.

(4) If the governmental entity makes a material change in the capital improvements plan or amendment, further notice and hearing may be provided before the governmental entity adopts the revision if the governmental entity makes a finding that further notice and hearing are required in the public interest.

(5) Either following or concurrently with adoption of the initial or amended capital improvements plan, a governmental entity shall conduct a public hearing to consider adoption of an ordinance authorizing the imposition of development impact fees or any amendment thereof. Notice of the hearing shall be provided in the same manner as set forth in subsection (3) of this section for adoption of a capital improvements plan, and such hearing, at the option of the governmental entity, may be combined with the public hearing held to adopt, amend or repeal the capital improvements plan.

(6) Nothing contained in this section shall be construed to alter the procedures for adoption of an ordinance by the governmental entity. Provided, however, a development impact fee ordinance shall not be adopted as an emergency measure but may be read for the first and second times on successive days prior to the public hearing to consider its adoption and shall not take effect sooner than thirty (30) days following its adoption.

67-8207. PROPORTIONATE SHARE DETERMINATION.

(1) All development impact fees shall be based on a reasonable and fair formula or method under which the development impact fee imposed does not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in the provision of system improvements to serve the new development. The proportionate share is the cost attributable to the new development after the governmental entity

considers the following: (i) any appropriate credit, offset or contribution of money, dedication of land, or construction of system improvements; (ii) payments reasonably anticipated to be made by or as a result of a new development in the form of user fees and debt service payments; (iii) that portion of general tax and other revenues allocated by the jurisdiction to system improvements; and (iv) all other available sources of funding such system improvements.

(2) In determining the proportionate share of the cost of system improvements to be paid by the developer, the following factors shall be considered by the governmental entity imposing the development impact fee and accounted for in the calculation of the impact fee:

(a) The cost of existing system improvements within the service area or areas;

(b) The means by which existing system improvements have been financed;

(c) The extent to which the new development will contribute to the cost of system improvements through taxation, assessment, or developer or landowner contributions, or has previously contributed to the cost of system improvements through developer or landowner contributions.

(d) The extent to which the new development is required to contribute to the cost of existing system improvements in the future.

(e) The extent to which the new development should be credited for providing system improvements, without charge to other properties within the service area or areas;

(f) Extraordinary costs, if any, incurred in serving the new development;

(g) The time and price differential inherent in a fair comparison of fees paid at different times; and

(h) The availability of other sources of funding system improvements including, but not limited to, user charges, general tax levies, intergovernmental transfers, and special taxation. The governmental entity shall develop a plan for alternative sources of revenue.

67-8208. CAPITAL IMPROVEMENTS PLAN.

(1) Each governmental entity intending to impose a development impact fee shall prepare a capital improvements plan. That portion of the cost of preparing a capital improvements plan which is attributable to determining the development impact fee may be funded by a one (1) time ad valorem levy which does not exceed two one-hundredths percent (.02%) of market value or by a surcharge imposed by ordinance on the collection of a development impact fee which surcharge does not exceed the development's proportionate share of the cost of preparing the plan. For governmental entities required to undertake comprehensive planning pursuant to chapter 65, title 67, Idaho Code, such capital improvements plan shall be prepared and adopted according to the requirements contained in the local planning act, section 67-6509, Idaho Code, and shall be included as an element of the comprehensive plan. The capital improvements plan shall be prepared by qualified professionals in fields relating to finance, engineering, planning and transportation. The persons preparing the plan shall consult with the development impact fee advisory committee.

The capital improvements plan shall contain all of the following:

> (a) A general description of all existing public facilities and their existing deficiencies within the service area or areas of the governmental entity and a reasonable estimate of all costs and a plan to develop the funding resources related to curing the existing deficiencies including, but not limited to, the upgrading, updating, improving, expanding or replacing of such facilities to meet existing needs and usage;

(b) A commitment by the governmental entity to use other available sources of revenue to cure existing system deficiencies where practical;

(c) An analysis of the total capacity, the level of current usage, and commitments for usage of capacity of existing capital improvements, which shall be prepared by a qualified professional planner or by a qualified engineer licensed to perform engineering services in this state;

(d) A description of the land use assumptions by the government entity;

(e) A definitive table establishing the specific level or quantity of use, consumption, generation or discharge of a service unit for each category of system improvements and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial, agricultural and industrial;

(f) A description of all system improvements and their costs necessitated by and attributable to new development in the service area based on the approved land use assumptions, to provide a level of service not to exceed the level of service adopted in the development impact fee ordinance;

(g) The total number of service units necessitated by and attributable to new development within the service area based on the approved land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;

(h) The projected demand for system improvements required by new service units projected over a reasonable period of time not to exceed twenty (20) years;

(i) Identification of all sources and levels of funding available to the governmental entity for the financing of the system improvements;

(j) If the proposed system improvements include the improvement of public facilities under the jurisdiction of the state of Idaho or another governmental entity, then an agreement between governmental entities shall specify the reasonable share of funding by each unit, provided the governmental entity authorized to impose development impact fees shall not assume more than its reasonable share of funding joint improvements, nor shall the agreement permit expenditure of development impact fees by a governmental entity which is not authorized to impose development impact fees unless such expenditure is pursuant to a developer agreement under section 67-8214, Idaho Code; and

(k) A schedule setting forth estimated dates for commencing and completing construction of all improvements identified in the capital improvements plan.

(2) The governmental entity imposing a development impact fee shall update the capital improvements plan at least once every five (5) years. The five (5) year period shall commence from the date of the original adoption of the capital improvements plan. The updating of the capital improvements plan shall be made in accordance with procedures set forth in section 67-8206, Idaho Code.

(3) The governmental entity must annually adopt a capital budget.

(4) The capital improvements plan shall be updated in conformance with the provisions of subsection (2) of this section each time a governmental entity proposes the amendment, modification or adoption of a development impact fee ordinance.

67-8209. CREDITS.

(1) In the calculation of development impact fees for a particular project, credit or reimbursement shall be given for the present value of any construction of system improvements or contribution or dedication of land or money required by a governmental entity from a developer for system improvements of the category for which the development impact fee is being collected, including such system improvements paid for pursuant to a local improvement district. Credit or reimbursement shall not be given for project improvement.

(2) In the calculation of development impact fees for a particular project, credit shall be given for the present value of all tax and user fee revenue generated by the developer, within the service area where the impact fee is being assessed and used by the governmental agency for system improvements of the category for which the development impact fee is being collected. If the amount of credit exceeds the proportionate share for the particular project, the developer shall receive a credit on future impact fees for the amount in excess of the proportionate share. The credit may be applied by the developer as an offset against future impact fees only in the service area where the credit was generated.

(3) If a developer is required to construct, fund or contribute system improvements in excess of the development project's proportionate share of system improvement costs, including such system improvements paid for pursuant to a local improvement district, the developer shall receive a credit on future impact fees or be reimbursed at the developer's choice for such excess construction, funding or contribution from development impact fees paid by future development which impacts the system improvements constructed, funded or contributed by the developer(s) or fee payer.

(4) If credit or reimbursement is due to the developer pursuant to this section, the governmental entity shall enter into a written agreement with the fee payer, negotiated in good faith, prior to the construction, funding or contribution. The agreement shall provide for the amount of credit or the amount, time and form of reimbursement.

67-8210. EARMARKING AND EXPENDITURE OF COLLECTED DEVELOPMENT IMPACT FEES.

(1) An ordinance imposing development impact fees shall provide that all development impact fee funds shall be maintained in one (1) or more interest-bearing accounts within the capital projects fund. Accounting records shall be maintained for each category of system improvements and the service area in which the fees are collected. Interest earned on development impact fees shall be considered funds of the account on which it is earned, and not funds subject to section 57-127, Idaho Code, and shall be subject to all restrictions placed on the use of development impact fees under the provisions of this chapter.

(2) Expenditures of development impact fees shall be made only for the category of system improvements and within or for the benefit of the service area for which the development impact fee was imposed as shown by the capital improvements plan and as authorized in this chapter. Development impact fees shall not be used for any purpose other than system improvement costs to create additional improvements to serve new growth.

(3) As part of its annual audit process, a governmental entity shall prepare an annual report:

> (a) Describing the amount of all development impact fees collected, appropriated, or spent during the preceding year by category of public facility and service area; and
>
> (b) Describing the percentage of tax and revenues other than impact fees collected, appropriated or spent for system improvements during the preceding year by category of public facility and service area.

(4) Collected development impact fees must be expended within five (5) years from the date they were collected, on a first-in, first-out (FIFO) basis, except that the development impact fees collected for wastewater collection, treatment and disposal and drainage facilities must be expended within twenty (20)

years. Any funds not expended within the prescribed times shall be refunded pursuant to section 67-8211, Idaho Code. A governmental entity may hold the fees for longer than five (5) years if it identifies, in writing:

(a) A reasonable cause why the fees should be held longer than five (5) years; and

(b) An anticipated date by which the fees will be expended but in no event greater than eight (8) years from the date they were collected.

67-8211. REFUNDS.

(1) Any governmental entity which adopts a development impact fee ordinance shall provide for refunds upon the request of an owner of property on which a development impact fee has been paid if:

(a) Service is available but never provided;

(b) A building permit or permit for installation of a manufactured home is denied or abandoned;

(c) The governmental entity, after collecting the fee when service is not available, has failed to appropriate and expend the collected development impact fees pursuant to section 67-8210(4), Idaho Code; or

(d) The fee payer pays a fee under protest and a subsequent review of the fee paid or the completion of an individual assessment determines that the fee paid exceeded the proportionate share to which the governmental entity was entitled to receive.

(2) When the right to a refund exists, the governmental entity is required to send a refund to the owner of record within ninety (90) days after it is determined by the governmental entity that a refund is due.

(3) A refund shall include a refund of interest at one-half (1/2) the legal rate provided for in section 28-22-104, Idaho Code, from the date on which the fee was originally paid.

(4) Any person entitled to a refund shall have standing to sue for a refund under the provisions of this chapter if there has not been a timely payment of a refund pursuant to subsection (2) of this section.

67-8212. APPEALS.

(1) A governmental entity which adopts a development impact fee ordinance shall provide for administrative appeals by the developer or fee payer from any discretionary action or inaction by or on behalf of the governmental entity.

(2) A fee payer may pay a development impact fee under protest in order to obtain a development approval or building permit. A fee payer making such payment shall not be estopped from exercising the right of appeal provided in this chapter, nor shall such fee payer be estopped from receiving a refund of any amount deemed to have been illegally collected.

(3) A governmental entity which adopts a development impact fee ordinance shall provide for mediation by a qualified independent party, upon voluntary agreement by the fee payer and the governmental entity, to address a disagreement related to the impact fee for proposed development. The ordinance shall provide that mediation may take place at any time during the appeals process and participation in mediation does not preclude the fee payer from pursuing other remedies provided for in this section. The ordinance shall provide that mediation costs will be shared equally by the fee payer and the governmental entity.

67-8213. COLLECTION. A governmental entity may provide in a development impact fee ordinance the means for collection of development impact fees, including, but not limited to:

(1) Additions to the fee for reasonable interest and penalties for non-payment or late payment;

(2) Withholding of the building permit or other governmental approval until the development impact fee is paid;

(3) Withholding of utility services until the development impact fee is paid; and

(4) Imposing liens for failure to timely pay a development impact fee following procedures contained in chapter 5, title 45, Idaho Code. A governmental entity that discovers an error in its impact fee formula that results in assessment or payment of more than a proportionate share shall, at the time of assessment on a case by case basis, adjust the fee to collect no more than a proportionate share or discontinue the collection of any impact fees until the error is corrected by ordinance.

67-8214. OTHER POWERS AND RIGHTS NOT AFFECTED.

(1) Nothing in this chapter shall prevent a governmental entity from requiring a developer to construct reasonable project improvements in conjunction with a development project.

(2) Nothing in this chapter shall be construed to prevent or prohibit private agreements between property owners or developers, the Idaho transportation department and governmental entities in regard to the construction or installation of system improvements or providing for credits or reimbursements for system improvement costs incurred by a developer including interproject transfers of credits or providing for reimbursement for project improvements which are used or shared by more than one (1) development project. If it can be shown that a proposed development has a direct impact on a public facility under the jurisdiction of the Idaho transportation department, then the agreement shall include a provision for the allocation of impact fees collected from the developer for the improvement of the public facility by the Idaho transportation department.

(3) Nothing in this chapter shall obligate a governmental entity to approve development which results in an extraordinary impact.

(4) Nothing in this chapter shall obligate a governmental entity to approve any development request which may reasonably be expected to reduce levels of service below minimum acceptable levels established in the development impact fee ordinance.

(5) Nothing in this chapter shall be construed to create any additional right to develop real property or diminish the power of counties or cities in regulating the orderly development of real property within their boundaries.

(6) Nothing in this chapter shall work to limit the use by governmental entities of the power of eminent domain or supersede or conflict with requirements or procedures authorized in the Idaho Code for local improvement districts or general obligation bond issues.

(7) Nothing herein shall restrict or diminish the power of a governmental entity to annex property into its territorial boundaries or exclude property from its territorial boundaries upon request of a developer or owner, or to impose reasonable conditions thereon, including the recovery of project or system improvement costs required as a result of such voluntary annexation.

67-8215. TRANSITION.

(1) The provisions of this chapter shall not be construed to repeal any existing laws authorizing a governmental entity to impose fees or require contributions or property dedications for capital improvements. All ordinances imposing development impact fees shall be brought into conformance with the

provisions of this chapter within one (1) year after the effective date of this chapter. Impact fees collected and developer agreements entered into prior to the expiration of the one (1) year period shall not be invalid by reason of this chapter. After adoption of a development impact fee ordinance, in accordance with the provisions of this chapter, notwithstanding any other provision of law, development requirements for system improvements shall be imposed by governmental entities only by way of development impact fees imposed pursuant to and in accordance with the provisions of this chapter.

(2) Notwithstanding any other provisions of this chapter, that portion of a project for which a valid building permit has been issued or construction has commenced prior to the effective date of a development impact fee ordinance shall not be subject to additional development impact fees so long as the building permit remains valid or construction is commenced and is pursued according to the terms of the permit or development approval.

67-8216. SEVERABILITY.

The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this chapter.

Illinois Constitution

[downloaded December 22, 2024]

Article VII, Section 6

(a) A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

Illinois Statutes

[downloaded December 21, 2024]

Municipal Code (65 ILCS 5/)
Article 11. Corporate Powers and Functions
Division 12. Plan Commissions

Sec. 11-12-4. Every municipality may create a plan commission or a planning department or both.
…

Sec. 11-12-5. Every plan commission and planning department authorized by this Division 12 has the following powers and whenever in this Division 12 the term plan commission is used such term shall be deemed to include the term planning department:
(1) To prepare and recommend to the corporate authorities a comprehensive plan for the present and future development or redevelopment of the municipality. Such plan may be adopted in whole or in separate geographical or functional parts, each of which, when adopted, shall be the official comprehensive plan, or part thereof, of that municipality. This plan may include reasonable requirements with reference to streets, alleys, public grounds, and other improvements hereinafter specified. The plan, as recommended by the plan commission and as thereafter adopted in any municipality in this state, may be made applicable, by the terms thereof, to land situated within the corporate limits and contiguous territory not more than one and one-half miles beyond the corporate limits and not included in any municipality. Such plan may be implemented by ordinances (a) establishing reasonable standards of design for subdivisions and for resubdivisions of unimproved land and of areas subject to redevelopment in respect to public improvements as herein defined; (b) establishing reasonable requirements governing the location, width, course, and surfacing of public streets and highways, alleys, ways for public service facilities, curbs, gutters, sidewalks, street lights, parks, playgrounds, school grounds, size of lots to be used for residential purposes, storm water drainage, water supply and distribution, sanitary sewers, and sewage collection and treatment; and (c) may designate land suitable for annexation to the municipality and the recommended zoning classification for such land upon annexation.
(2) To recommend changes, from time to time, in the official comprehensive plan.
(3) To prepare and recommend to the corporate authorities, from time to time, plans for specific improvements in pursuance of the official comprehensive plan.
(4) To give aid to the municipal officials charged with the direction of projects for improvements embraced within the official plan, to further the making of these projects, and, generally, to promote the realization of the official comprehensive plan.
(5) To prepare and recommend to the corporate authorities schemes for regulating or forbidding structures or activities which may hinder access to solar energy necessary for the proper functioning of solar energy systems, as defined in Section 1.2 of the Comprehensive Solar Energy Act of 1977, or to recommend changes in such schemes.

(6) To exercise such other powers germane to the powers granted by this Article as may be conferred by the corporate authorities.

For purposes of implementing ordinances regarding developer donations or impact fees, and specifically for expenditures thereof, "school grounds" is defined as including land or site improvements, which include school buildings or other infrastructure, including technological infrastructure, necessitated and specifically and uniquely attributed to the development or subdivision in question. This amendatory Act of the 93rd General Assembly applies to all impact fees or developer donations paid into a school district or held in a separate account or escrow fund by any school district or municipality for a school district.

Sec. 11-12-5.1. School land donations. The governing board of a school district may submit to the corporate authorities of a municipality having a population of less than 500,000 which is served by the school district a written request that a meeting be held to discuss school land donations from a developer of a subdivision or resubdivision of land included within the area served by the school district. For the purposes of this Section, "school land donation" means a donation of land for public school purposes or a cash contribution in lieu thereof, or a combination of both.
...

Sec. 11-12-6. An official comprehensive plan, or any amendment thereof, or addition thereto, proposed by a plan commission shall be effective in the municipality and contiguous area herein prescribed only after its formal adoption by the corporate authorities. Such plan shall be advisory and in and of itself shall not be construed to regulate or control the use of private property in any way, except as to such part thereof as has been implemented by ordinances duly enacted by the corporate authorities. At any time or times, before or after the adoption of the official comprehensive plan by the corporate authorities, such corporate authorities may designate by ordinance an official map, which map may consist of the whole area included within the official comprehensive plan or one or more separate geographical or functional parts, and may include all or any part of the contiguous unincorporated area within one and one-half miles from the corporate limits of the municipality. Such map or maps shall be made a part of the ordinance, which ordinance shall specifically state standard requirements of the municipality relating to size of streets, alleys, public ways, parks, playgrounds, school sites, other public grounds, and ways for public service facilities; the kind and quantity of materials which shall be used in the construction of streets, and alleys; and the kind and quality of materials for public service facilities as may be consistent with Illinois Commerce Commission or industry standards, and shall contain the standards required for drainage and sanitary sewers and collection and treatment of sewage. The map shall be drawn to scale, shall be reasonably accurate, and shall show north point, section lines and numbers, and streams.
...

Sec. 11-12-12. No map or plat of any subdivision presented for record affecting land (1) within the corporate limits of any municipality which has heretofore adopted, or shall hereafter adopt an ordinance including an official map in the manner prescribed in this Division 12, or (2) within contiguous territory which is not more than 1 1/2 miles beyond the corporate limits of an adopting municipality, shall be entitled to record or shall be valid unless the subdivision shown thereon provides for streets, alleys, public ways, ways for public service facilities, storm and flood water run-off channels and basins, and public grounds, in conformity with the applicable requirements of the ordinances including the official map; provided, that a certificate of approval by the corporate authorities, certified by the clerk of the municipality in whose jurisdiction the land is located, or a certified copy of an order of the circuit court directing the recording as provided in Section 11-12-8, shall be sufficient evidence of compliance with this section upon which the recorder may accept the plat for recording.

Notes: The Second District, First Division Appellate Court of Illinois, in Krughoff v. City of Naperville decision on 8/26/1976 cited the constitutional provision and statutory language above in affirming the trial judge's ruling rejecting the plaintiff's request for declaratory judgment that the City of Naperville's park and school impact fee ordinances were beyond the City's constitutional home rule powers.

Illinois Realtors, Impact Fees in Illinois, January 2024, states that:

> A municipality's power to enact an impact fee generally stems from the Illinois Municipal Code [65 ILCS 5/11-12-5]. This section grants municipal plan commissions the power to adopt comprehensive plans that include reasonable requirements for locating, among other things, school grounds. The law goes on to say that a school district may request that the municipality and/or county consider a plan for "school land donations." The law defines "school land donations" as "a donation of land for public school purposes or a cash contribution in lieu thereof, or a combination of both." The statute also makes clear that cash donations, or impact fees, can be used for construction of school buildings or other infrastructure necessitated by new development. This same statutory authority regarding land/cash donations exists for libraries and park districts.

A publication by the Illinois Association of Realtors states that home rule municipalities have authority to impose impact fees for parks, schools, and libraries ("Impact Fees in Illinois," revised 1/2024), as well as roads (see statute below).

Illinois Road Improvement Impact Fee Law

[downloaded December 21, 2024]

Illinois Compiled Statutes
Roads and Bridges
Illinois Highway Code
605 ILCS 5/

ARTICLE 5. COUNTY ADMINISTRATION OF HIGHWAYS
DIVISION 9. ROAD IMPROVEMENT IMPACT FEES

Sec. 5-901. Short title. This Division may be cited as the Road Improvement Impact Fee Law.

Sec. 5-902. General purposes. The General Assembly finds that the purpose of this legislation is to create the authority for units of local government to adopt and implement road improvement impact fee ordinances and resolutions. The General Assembly further recognizes that the imposition of such road improvement impact fees is designed to supplement other funding sources so that the burden of paying for road improvements can be allocated in a fair and equitable manner. It is the intent of the General Assembly to promote orderly economic growth throughout the State by assuring that new development bears its fair share of the cost of meeting the demand for road improvements through the imposition of road improvement impact fees. It is also the intent of the General Assembly to preserve the authority of elected local government officials to adopt and implement road improvement impact fee ordinances or resolutions which adhere to the minimum standards and procedures adopted in this Division by the State.
(Source: P.A. 86-97.)

Sec. 5-903. Definitions. As used in this Division:

"Units of local government" mean counties with a population over 400,000 and all home rule municipalities.

"Road improvement impact fee" means any charge or fee levied or imposed by a unit of local government as a condition to the issuance of a building permit or a certificate of occupancy in connection with a new development, when any portion of the revenues collected is intended to be used to fund any portion of the costs of road improvements.

"Road improvements" mean the improvement, expansion, enlargement or construction of roads, streets, or highways under the jurisdiction of units of local government, including but not limited to bridges, rights-of-way, and traffic control improvements owned and operated by such units of local government. Road improvements may also include the improvement, expansion, enlargement or construction of roads, ramps, streets or highways under the jurisdiction of the State of Illinois, provided an agreement providing for the construction and financing of such road improvements has been reached between the State and the unit of local government and incorporated into the comprehensive road improvement plan. Road improvements shall not include tollways but may include tollway ramps.

"New development" means any residential, commercial, industrial or other project which is being newly constructed, reconstructed, redeveloped, structurally altered, relocated, or enlarged, and which generates additional traffic within the service area or areas of the unit of local government. "New development" shall not include any new development for which site specific development approval has been given by a unit of local government within 18 months before the first date of publication by the unit of local government of a notice of public hearing to consider the land use assumptions relating to the development of a comprehensive road improvement plan and imposition of impact fees; provided, however, that a building permit for such new development is issued within 18 months after the date of publication of such notice.

"Roads, streets or highways" mean any roads, streets or highways which have been designated by the unit of local government in the comprehensive road improvement plan together with all necessary appurtenances, including but not limited to bridges, rights-of-way, tollway ramps, and traffic control improvements.

"Comprehensive road improvement plan" means a plan prepared by the unit of local government in consultation with the Advisory Committee.

"Advisory Committee" means the group of members selected from the public and private sectors to advise in the development and implementation of the comprehensive road improvement plan, and the periodic update of the plan.

"Person" means any individual, firm, partnership, association, public or private corporation, organization or business, charitable trust, or unit of local government.

"Land use assumptions" means a description of the service area or areas and the roads, streets or highways incorporated therein, including projections relating to changes in land uses, densities and population growth rates which affect the level of traffic within the service area or areas over a 20 year period of time.

"Service area" means one or more land areas within the boundaries of the unit of local government which has been designated by the unit of local government in the comprehensive road improvement plan.

"Residential development" means a house, building, or other structure that is suitable or capable of being used for residential purposes.

"Nonresidential development" means a building or other structure that is suitable or capable of being used for all purposes other than residential purposes.

"Specifically and uniquely attributable" means that a new development creates the need, or an identifiable portion of the need, for additional capacity to be provided by a road improvement. Each new development paying impact fees used to fund a road improvement must receive a direct and material benefit from the road improvement constructed with the impact fees paid. The need for road improvements funded by impact fees shall be based upon generally accepted traffic engineering practices as assignable to the new development paying the fees.

"Proportionate share" means the cost of road improvements that are specifically and uniquely attributable to a new development after the consideration of the following factors: the amount of additional traffic

generated by the new development, any appropriate credit or offset for contribution of money, dedication of land, construction of road improvements or traffic reduction techniques, payments reasonably anticipated to be made by or as a result of a new development in the form of user fees, debt service payments, or taxes which are dedicated for road improvements and all other available sources of funding road improvements.

"Level of service" means one of the categories of road service as defined by the Institute of Transportation Engineers which shall be selected by a unit of local government imposing the impact fee as the adopted level of service to serve existing development not subject to the fee and new development, provided that the level of service selected for new development shall not exceed the level of service adopted for existing development.

"Site specific development approval" means an approval of a plan submitted by a developer to a unit of local government describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. The plan may be in the form of, but need not be limited to, any of the following: a preliminary or final planned unit development plan, subdivision plat, development plan, conditional or special use permit, or any other form of development use approval, as utilized by a unit of local government, provided that the development use approval constitutes a final exercise of discretion by the unit of local government.

"Developer" means any person who undertakes new development.

"Existing deficiencies" mean existing roads, streets, or highways operating at a level of service below the adopted level of service selected by the unit of local government, as defined in the comprehensive road improvement plan.

"Assisted financing" means the financing of residential development by the Illinois Housing Development Authority, including loans to developers for multi-unit residential development and loans to purchasers of single family residences, including condominiums and townhomes.

Sec. 5-904. Authorization for the Imposition of an Impact Fee. No impact fee shall be imposed by a unit of local government within a service area or areas upon a developer for the purposes of improving, expanding, enlarging or constructing roads, streets or highways directly affected by the traffic demands generated from the new development unless imposed pursuant to the provisions of this Division. An impact fee payable by a developer shall not exceed a proportionate share of costs incurred by a unit of local government which are specifically and uniquely attributable to the new development paying the fee in providing road improvements, but may be used to cover costs associated with the surveying of the service area, with the acquisition of land and rights-of-way, with engineering and planning costs, and with all other costs which are directly related to the improvement, expansion, enlargement or construction of roads, streets or highways within the service area or areas as designated in the comprehensive road improvement plan. An impact fee shall not be imposed to cover costs associated with the repair, reconstruction, operation or maintenance of existing roads, streets or highways, nor shall an impact fee be used to cure existing deficiencies or to upgrade, update, expand or replace existing roads in order to meet stricter safety or environmental requirements; provided, however, that such fees may be used in conjunction with other funds available to the unit of local government for the purpose of curing existing deficiencies, but in no event shall the amount of impact fees expended exceed the development's proportionate share of the cost of such road improvements. Nothing contained in this Section shall preclude a unit of local government from providing credits to the developer for services, conveyances, improvements or cash if provided by agreement even if the credits are for improvements not included in the comprehensive road improvement plan, provided the improvements are otherwise eligible for inclusion in the comprehensive road improvement plan.

Sec. 5-905. Procedure for the Imposition of Impact Fees.

(a) Unless otherwise provided for in this Division, an impact fee shall be imposed by a unit of local government only upon compliance with the provisions set forth in this Section.

(b) A unit of local government intending to impose an impact fee shall adopt an ordinance or resolution establishing a public hearing date to consider land use assumptions that will be used to develop the comprehensive road improvement plan. Before the adoption of the ordinance or resolution establishing a public hearing date, the governing body of the unit of local government shall appoint an Advisory Committee in accordance with this Division.

(c) The unit of local government shall provide public notice of the hearing date to consider land use assumptions in accordance with the provisions contained in this Section.

(d) The unit of local government shall publish notice of the hearing date once each week for 3 consecutive weeks, not less than 30 and not more than 60 days before the scheduled date of the hearing, in a newspaper of general circulation within the unit of local government. The notice of public hearing shall not appear in the part of the paper where legal notices or classified ads appear. The notice shall not be smaller than one-quarter page of standard size or tabloid-size newspaper.

(e) The notice shall contain all of the following information:

(1) Headline designated as follows: "NOTICE OF PUBLIC HEARING ON LAND USE ASSUMPTIONS RELATING TO THE DEVELOPMENT OF A COMPREHENSIVE ROAD IMPROVEMENT PLAN AND IMPOSITION OF IMPACT FEES".

(2) The date, time and location of the public hearing.

(3) A statement that the purpose of the hearing is to consider proposed land use assumptions within the service area or areas that will be used to develop a comprehensive road improvement plan.

(4) A general description of the service area or areas within the unit of local government being affected by the proposed land use assumptions.

(5) A statement that the unit of local government shall make available to the public upon request the following: proposed land use assumptions, an easily understandable and detailed map of the service area or areas to which the proposed land use assumptions shall apply, along with all other available information relating to the proposed land use assumptions.

(6) A statement that any member of the public affected by the proposed land use assumptions shall have the right to appear at the public hearing and present evidence in support of or against the proposed land use assumptions.

(f) In addition to the public notice requirement, the unit of local government shall send a notice of the intent to hold a public hearing by certified mail, return receipt requested, to any person who has requested in writing by certified mail return receipt requested, notification of the hearing date, at least 30 days before the date of the adoption of the ordinance or resolution establishing the public hearing date.

(g) A public hearing shall be held for the consideration of the proposed land use assumptions. Within 30 days after the public hearing has been held, the Advisory Committee shall make a recommendation to adopt, reject in whole or in part, or modify the proposed land use assumptions presented at the hearing by written report to the unit of local government. Thereafter the unit of local government shall have not less than 30 nor more than 60 days to approve, disapprove, or modify by ordinance or resolution the land use assumptions proposed at the public hearing and the recommendations made by the Advisory Committee. Such ordinance or resolution shall not be adopted as an emergency measure.

(h) Upon the adoption of an ordinance or resolution approving the land use assumptions, the unit of local government shall provide for a comprehensive road improvement plan to be developed by qualified professionals familiar with generally accepted engineering and planning practices. The comprehensive road improvement plan shall include projections of all costs related to the road improvements designated in the comprehensive road improvement plan.

(i) The unit of local government shall adopt an ordinance or resolution establishing a date for a public hearing to consider the comprehensive road improvement plan and the imposition of impact fees related thereto.

(j) A public hearing to consider the adoption of the comprehensive road improvement plan and imposition of impact fees shall be held within the unit of local government subject to the same notice provisions as those set forth in the subsection (d). The public hearing shall be conducted by an official designated by the unit of local government.

(k) Within 30 days after the public hearing has been held, the Advisory Committee shall make a recommendation to adopt, reject in whole or in part, or modify the proposed comprehensive road improvement plan and impact fees. The unit of local government shall have not less than 30 nor more than 60 days to approve, disapprove, or modify by ordinance or resolution the proposed comprehensive road improvement plan and impact fees. Such ordinance or resolution shall not be adopted as an emergency measure.

Sec. 5-906. Impact Fee Ordinance or Resolution Requirements.

(a) An impact fee ordinance or resolution shall satisfy the following 2 requirements:

(1) The construction, improvement, expansion or enlargement of new or existing roads, streets, or highways for which an impact fee is imposed must be specifically and uniquely attributable to the traffic demands generated by the new development paying the fee.

(2) The impact fee imposed must not exceed a proportionate share of the costs incurred or the costs that will be incurred by the unit of local government in the provision of road improvements to serve the new development. The proportionate share is the cost specifically attributable to the new development after the unit of local government considers the following: (i) any appropriate credit, offset or contribution of money, dedication of land, construction of road improvements or traffic reduction techniques; (ii) payments reasonably anticipated to be made by or as a result of a new development in the form of user fees, debt service payments, or taxes which are dedicated for road improvements; and (iii) all other available sources of funding road improvements.

(b) In determining the proportionate share of the cost of road improvements to be paid by the developer, the following 8 factors shall be considered by the unit of local government imposing the impact fee:

(1) The cost of existing roads, streets and highways within the service area or areas.

(2) The means by which existing roads, streets and highways have been financed to cure existing deficiencies.

(3) The extent to which the new development being assessed the impact fees has already contributed to the cost of improving existing roads, streets or highways through taxation, assessment, or developer or landowner contributions paid in prior years.

(4) The extent to which the new development will contribute to the cost of improving existing roads, streets or highways in the future.

(5) The extent to which the new development should be credited for providing road improvements, without charge to other properties within the service area or areas.

(6) Extraordinary costs, if any, incurred in servicing the new development.

(7) Consideration of the time and price differential inherent in a fair comparison of fees paid at different times.

(8) The availability of other sources of funding road improvements, including but not limited to user charges, general tax levies, intergovernmental transfers, and special taxation or assessments.

(c) An impact fee ordinance or resolution shall provide for the calculation of an impact fee in accordance with generally accepted accounting practices. An impact fee shall not be deemed invalid because payment of

the fee may result in a benefit to other owners or developers within the service area or areas, other than the person paying the fee.

Sec. 5-907. Advisory Committee. A road improvement impact fee advisory committee shall be created by the unit of local government intending to impose impact fees. The Advisory Committee shall consist of not less than 10 members and not more than 20 members. Not less than 40% of the members of the committee shall be representatives of the real estate, development, and building industries and the labor communities and may not be employees or officials of the unit of local government.

The members of the Advisory Committee shall be selected as follows:

(1) The representatives of real estate shall be licensed under the Real Estate License Act of 2000 and shall be designated by the President of the Illinois Association of Realtors from a local Board from the service area or areas of the unit of local government.

(2) The representatives of the development industry shall be designated by the Regional Developers Association.

(3) The representatives of the building industry shall be designated representatives of the Regional Home Builders representing the unit of local government's geographic area as appointed from time to time by that Association's president.

(4) The labor representatives shall be chosen by either the Central Labor Council or the Building and Construction Trades Council having jurisdiction within the unit of local government.

If the unit of local government is a county, at least 30% of the members serving on the commission must be representatives of the municipalities within the county. The municipal representatives shall be selected by a convention of mayors in the county, who shall elect from their membership municipal representatives to serve on the Advisory Committee. The members representing the county shall be appointed by the chief executive officer of the county.

If the unit of local government is a municipality, the non-public representatives shall be appointed by the chief executive officer of the municipality.

If the unit of local government has a planning or zoning commission, the unit of local government may elect to use its planning or zoning commission to serve as the Advisory Committee, provided that not less than 40% of the committee members include representatives of the real estate, development, and building industries and the labor communities who are not employees or officials of the unit of local government. A unit of local government may appoint additional members to serve on the planning or zoning commission as ad hoc voting members whenever the planning or zoning commission functions as the Advisory Committee; provided that no less than 40% of the members include representatives of the real estate, development, and building industries and the labor communities.

Sec. 5-908. Duties of the Advisory Committee. The Advisory Committee shall serve in an advisory capacity and shall have the following duties:

(1) Advise and assist the unit of local government by recommending proposed land use assumptions.

(2) Make recommendations with respect to the development of a comprehensive road improvement plan.

(3) Make recommendations to approve, disapprove or modify a comprehensive road improvement plan by preparing a written report containing these recommendations to the unit of local government.

(4) Report to the unit of local government on all matters relating to the imposition of impact fees.

(5) Monitor and evaluate the implementation of the comprehensive road improvement plan and the assessment of impact fees.

(6) Report annually to the unit of local government with respect to the progress of the implementation of the comprehensive road improvement plan.

(7) Advise the unit of local government of the need to update or revise the land use assumptions, comprehensive road improvement plan, or impact fees.

The unit of local government shall adopt procedural rules to be used by the Advisory Committee in carrying out the duties imposed by this Division.

Sec. 5-909. Unit of Local Government to Cooperate with the Advisory Committee. The unit of local government shall make available to the Advisory Committee all professional reports in relation to the development and implementation of land use assumptions, the comprehensive road improvement plan and periodic up-dates to the comprehensive road improvement plan.

Sec. 5-910. Comprehensive Road Improvement Plan. Each unit of local government intending to impose an impact fee shall prepare a comprehensive road improvement plan. The plan shall be prepared by persons qualified in fields relating to engineering, planning, or transportation. The persons preparing the plan shall consult with the Advisory Committee. The comprehensive road improvement plan shall contain all of the following:

(1) A description of all existing roads, streets or highways and their existing deficiencies within the service area or areas of the unit of local government and a reasonable estimate of all costs related to curing the existing deficiencies, including but not limited to the upgrading, updating, improving, expanding or replacing of such roads, streets or highways and the current level of service of the existing roads, streets and highways.

(2) A commitment by the unit of local government to cure existing deficiencies where practicable relating to roads, streets, and highways.

(3) A description of the land use assumptions adopted by the unit of local government.

(4) A description of all roads, streets or highways proposed to be improved, expanded, enlarged or constructed to serve new development and a reasonable estimate of all costs related to the improvement, expansion, enlargement or construction of the roads, streets or highways needed to serve new development at a level of service not to exceed the level of service on the currently existing roads, streets or highways.

(5) Identification of all sources and levels of funding available to the unit of local government for the financing of the road improvements.

(6) If the proposed road improvements include the improvement of roads, streets or highways under the jurisdiction of the State of Illinois or another unit of local government, then an agreement between units of government shall specify the proportionate share of funding by each unit. All agreements entered into by the State must provide that the portion of the impact fees collected due to the impact of new development upon roads, streets, or highways under State jurisdiction be allocated for expenditure for improvements to those roads, streets, and highways under State jurisdiction.

(7) A schedule setting forth estimated dates for commencing construction of all road improvements identified in the comprehensive road improvement plan.

Nothing contained in this subsection shall limit the right of a home rule unit of local government from imposing conditions on a Planned Unit Development or other zoning relief which may include contributions for road improvements, which are necessary or appropriate for such developments, but are not otherwise provided for in the comprehensive road improvement plan.

Sec. 5-911. Assessment of Impact Fees. Impact fees shall be assessed by units of local government at the time of final plat approval or when the building permit is issued when no plat approval is necessary. No impact fee shall be assessed by a unit of local government for roads, streets or highways within the service area or areas of the unit of local government if and to the extent that another unit of local government has imposed an impact fee for the same roads, streets or highways.

Sec. 5-912. Payment of Impact Fees. In order to minimize the effect of impact fees on the person paying the fees, the following methods of payment shall be used by the unit of local government in collecting impact fees. Impact fees imposed upon a residential development, consisting of one single family residence, shall be payable as a condition to the issuance of the building permit. Impact fees imposed upon all other types of new development, including multi-unit residential development, shall be payable as a condition to the issuance of the certificate of occupancy, provided that the developer and the unit of local government enter into an agreement designating that the developer notify the unit of local government that the building permit

or the certificate of occupancy has been issued. For any development receiving assisted financing, including any development for which a commitment for assisted financing has been issued and for which assisted financing is provided within 6 months of the issuance of the certificate of occupancy, the unit of local government shall provide for the payment of the impact fees through an installment agreement at a reasonable rate of interest for a period of 10 years after the impact fee is due. Nothing contained in this Section shall preclude the payment of the impact fee at the time when the building permit is issued or at an earlier stage of development if agreed to by the unit of local government and the person paying the fees. Nothing contained in this Section shall preclude the unit of local government from making and entering into agreements providing for the cooperative collection of impact fees but the collection of impact fees shall be the sole responsibility of the unit of local government imposing the impact fee. Such agreements may also provide for the reimbursement of collection costs from the fees collected.

At the option of the unit of local government, impact fees may be paid through an installment agreement at a reasonable rate of interest for a period of up to 10 years after the impact fee is due.

Nothing contained in this section shall be construed to give units of local government a preference over the rights of any purchaser, mortgagee, judgment creditor or other lienholder arising prior to the filing in the office of the recorder of the county or counties in which the property is located of notification of the existence of any uncollected impact fees.

Sec. 5-913. Impact Fees to be Held in Interest Bearing Accounts. All impact fees collected pursuant to this Division shall be deposited into interest bearing accounts designated solely for such funds for each service area. All interest earned on such funds shall become a part of the moneys to be used for the road improvements authorized by this Division. The unit of local government shall provide that an accounting be made annually for any account containing impact fee proceeds and interest earned. Such accounting shall include, but shall not be limited to, the total funds collected, the source of the funds collected, the total amount of interest accruing on such funds, and the amount of funds expended on road improvements. Notice of the results of the accounting shall be published in a newspaper of general circulation within the unit of local government at least 3 times. A statement that a copy of the report is available to the public for inspection at reasonable times shall be contained in the notice. A copy of the report shall be provided to the Advisory Committee.

Sec. 5-914. Expenditures of Impact Fees. Impact fees shall only be expended on those road improvements within the service area or areas as specified in the comprehensive road improvement plan, as updated from time to time. Impact fees shall be expended in the same manner as motor fuel tax money allotted to the unit of local government solely for road improvement costs.

Sec. 5-915. Comprehensive Road Improvement Plan Amendments and Updates. The unit of local government imposing an impact fee may amend the comprehensive road improvement plan no more than once per year, provided the cumulative amendments do not exceed 10% of the total plan in terms of estimated project costs. If a proposed plan amendment will result in the cumulative amendments to the plan exceeding 10% of the total plan, then the unit of local government shall follow the procedures set forth in Section 5-905 of this Division. Regardless of whether the Comprehensive Road Improvement Plan has been amended, the unit of local government imposing an impact fee shall update the comprehensive road improvement plan at least once every 5 years. The 5 year period shall commence from the date of the original adoption of the comprehensive road improvement plan. The updating of the comprehensive road improvement plan shall be made in accordance with the procedures set forth in Section 5-905 of this Division.

Sec. 5-916. Refund of Impact Fees. All impact fees collected by a unit of local government shall be refunded to the person who paid the fee or to that person's successor in interest whenever the unit of local government fails to encumber by contract impact fees collected within 5 years of the date on which such impact fees were due to be paid.

Refunds shall be made in accordance with this Section provided that the person who paid the fee or that person's successor in interest files a petition with the unit of local government imposing the impact fee, seeking a refund within one year from the date that such fees were required to be encumbered by contract.

All refunds made shall bear interest at a rate which is at least 70% of the Prime Commercial Rate in effect at the time of the imposition of the impact fee.

Sec. 5-917. Appeals Process. Any person paying an impact fee shall have the right to contest the land use assumptions, the development and implementation of the comprehensive road improvement plan, the imposition of impact fees, the periodic updating of the road improvement plan, the refund of impact fees and all other matters relating to impact fees. The initial appeal shall be made to the legislative body of the unit of local government in accordance with the procedures adopted in the ordinance or resolution. Any subsequent relief shall be sought in a de novo proceeding in the appropriate circuit court.

(This Section may contain text from a Public Act with a delayed effective date)

Sec. 5-917.1. Repeal of road improvement impact fee by ordinance or resolution. If DuPage County has adopted and implemented a road improvement impact fee by ordinance or resolution and repeals the ordinance or resolution, the collected fees, along with any accrued interest, in the existing impact fee accounts shall be transferred to a transportation account to be used for capacity-related improvements. Valid impact fee refunds shall be processed in accordance with the procedures set forth in the repealed ordinance or resolution.

Sec. 5-918. Transition Clauses.

(a) Conformance of Existing Ordinances. A unit of local government which currently has in effect an impact fee ordinance or resolution shall have not more than 12 months from July 26, 1989 to bring its ordinance or resolution into conformance with the requirements imposed by this Act, except that a home rule unit of local government with a population over 75,000 and located in a county with a population over 600,000 and less than 2,000,000 shall have not more than 18 months from July 26, 1989, to bring that ordinance or resolution into conformance.

(b) Exemption of Developments Receiving Site Specific Development Approval. No development which has received site specific development approval from a unit of local government within 18 months before the first date of publication by the unit of local government of a notice of public hearing to consider land use assumptions relating to the development of a comprehensive road improvement plan and imposition of impact fees and which has filed for building permits or certificates of occupancy within 18 months of the date of approval of the site specific development plan shall be required to pay impact fees for permits or certificates of occupancy issued within that 18 month period.

This Division shall have no effect on the validity of any existing agreements entered into between a developer and a unit of local government pertaining to fees, exactions or donations made by a developer for the purpose of funding road improvements.

(c) Exception to the Exemption of Developments Receiving Site Specific Development Approval. Nothing in this Section shall require the refund of impact fees previously collected by units of local government in accordance with their ordinances or resolutions, if such ordinances or resolutions were adopted prior to the effective date of this Act and provided that such impact fees are encumbered as provided in Section 5-916.

Sec. 5-919. Home Rule Preemption. A home rule unit may not impose road improvement impact fees in a manner inconsistent with this Division. This Division is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.

… …

Indiana Impact Fees Act

[downloaded April 16, 2009]

IC 36-7-4-1300
1300 Series_Impact Fees
Sec. 1300. This series (sections 1300 through 1399 of this chapter) may be cited as follows: 1300 SERIES _ IMPACT FEES.
As added by P.L.221-1991, SEC.1.

IC 36-7-4-1301
"Community level of service" defined
Sec. 1301. As used in this series, "community level of service" means a quantitative measure of the service provided by the infrastructure that is determined by a unit to be appropriate.
As added by P.L.221-1991, SEC.2.

IC 36-7-4-1302
"Current level of service" defined
Sec. 1302. As used in this series, "current level of service" means a quantitative measure of service provided by existing infrastructure to support existing development.
As added by P.L.221-1991, SEC.3.

IC 36-7-4-1303
"Development" defined
Sec. 1303. As used in this series, "development" means an improvement of any kind on land.
As added by P.L.221-1991, SEC.4.

IC 36-7-4-1304
"Fee payer" and "person" defined
Sec. 1304. (a) As used in this series, "fee payer" means the following:
(1) A person who has paid an impact fee.
(2) A person to whom a person who paid an impact fee has made a written assignment of rights concerning the impact fee.
(3) A person who has assumed by operation of law the rights concerning an impact fee.
(b) As used in this series, "person" means an individual, a sole proprietorship, a partnership, an association, a corporation, a fiduciary, or any other entity.
As added by P.L.221-1991, SEC.5.

IC 36-7-4-1305
"Impact fee" and "capital costs" defined
Sec. 1305. (a) As used in this series, "impact fee" means a monetary charge imposed on new development by a unit to defray or mitigate the capital costs of infrastructure that is required by, necessitated by, or needed to serve the new development.
(b) As used in this section, "capital costs" means the costs incurred to provide additional infrastructure to serve new development, including the following:
(1) Directly related costs of construction or expansion of infrastructure that is necessary to serve the new development, including reasonable design, survey, engineering, environmental, and other professional fees that are directly related to the construction or expansion.
(2) Directly related land acquisition costs, including costs incurred for the following:
(A) Purchases of interests in land.
(B) Court awards or settlements.
(C) Reasonable appraisal, relocation service, negotiation service, title insurance, expert witness, attorney, and other professional fees that are directly related to the land acquisition.

(3) Directly related debt service, subject to section 1330 of this chapter.

(4) Directly related expenses incurred in preparing or updating the comprehensive plan or zone improvement plan, including all administrative, consulting, attorney, and other professional fees, as limited by section 1330 of this chapter.

As added by P.L.221-1991, SEC.6.

IC 36-7-4-1306

"Impact fee ordinance" defined

Sec. 1306. As used in this series, "impact fee ordinance" means an ordinance adopted under section 1311 of this chapter.

As added by P.L.221-1991, SEC.7.

IC 36-7-4-1307

"Impact zone" defined

Sec. 1307. As used in this series, "impact zone" means a geographic area designated under section 1315 of this chapter.

As added by P.L.221-1991, SEC.8.

IC 36-7-4-1308

"Infrastructure" defined

Sec. 1308. As used in this series, "infrastructure" means the capital improvements that:

(1) comprise:

(A) a sanitary sewer system or wastewater treatment facility;

(B) a park or recreational facility;

(C) a road or bridge;

(D) a drainage or flood control facility; or

(E) a water treatment, water storage, or water distribution facility;

(2) are:

(A) owned solely for a public purpose by:

(i) a unit; or

(ii) a corporation created by a unit; or

(B) leased by a unit solely for a public purpose; and

(3) are included in the zone improvement plan of the impact zone in which the capital improvements are located.

The term includes site improvements or interests in real property needed for a facility listed in subdivision (1).

As added by P.L.221-1991, SEC.9.

IC 36-7-4-1309

"Infrastructure type" defined

Sec. 1309. As used in this series, "infrastructure type" means any of the following types of infrastructure covered by an impact fee ordinance:

(1) Sewer, which includes sanitary sewerage and wastewater treatment facilities.

(2) Recreation, which includes parks and other recreational facilities.

(3) Road, which includes public ways and bridges.

(4) Drainage, which includes drains and flood control facilities.

(5) Water, which includes water treatment, water storage, and water distribution facilities.

As added by P.L.221-1991, SEC.10.

IC 36-7-4-1310

"Infrastructure agency" defined

Sec. 1310. As used in this series, "infrastructure agency" means a political subdivision or an agency of a political subdivision responsible for acquiring, constructing, or providing a particular infrastructure type.

As added by P.L.221-1991, SEC.11.

IC 36-7-4-1311
Ordinance; jurisdiction to adopt; impact fees and other charges

Sec. 1311. (a) The legislative body of a unit may adopt an ordinance imposing an impact fee on new development in the geographic area over which the unit exercises planning and zoning jurisdiction. The ordinance must aggregate the portions of the impact fee attributable to the infrastructure types covered by the ordinance so that a single and unified impact fee is imposed on each new development.

(b) If the legislative body of a unit has planning and zoning jurisdiction over the entire geographic area covered by the impact fee ordinance, an ordinance adopted under this section shall be adopted in the same manner that zoning ordinances are adopted under the 600 SERIES of this chapter.

(c) If the legislative body of a unit does not have planning and zoning jurisdiction over the entire geographic area covered by the impact fee ordinance but does have jurisdiction over one (1) or more infrastructure types in the area, the legislative body shall establish the portion of the impact fee schedule or formula for the infrastructure types over which the legislative body has jurisdiction. The legislative body of the unit having planning and zoning jurisdiction shall adopt an impact fee ordinance containing that portion of the impact fee schedule or formula if:

(1) a public hearing has been held before the legislative body having planning and zoning jurisdiction; and

(2) each plan commission that has planning jurisdiction over any part of the geographic area in which the impact fee is to be imposed has approved the proposed impact fee ordinance by resolution.

(d) An ordinance adopted under this section is the exclusive means for a unit to impose an impact fee. An impact fee imposed on new development to pay for infrastructure may not be collected after January 1, 1992, unless the impact fee is imposed under an impact fee ordinance adopted under this chapter.

(e) Notwithstanding any other provision of this chapter, the following charges are not impact fees and may continue to be imposed by units:

(1) Fees, charges, or assessments imposed for infrastructure services under statutes in existence on January 1, 1991, if:

(A) the fee, charge, or assessment is imposed upon all users whether they are new users or users requiring additional capacity or services;

(B) the fee, charge, or assessment is not used to fund construction of new infrastructure unless the new infrastructure is of the same type for which the fee, charge, or assessment is imposed and will serve the payer; and

(C) the fee, charge, or assessment constitutes a reasonable charge for the services provided in accordance with IC 36-1-3-8(6) or other governing statutes requiring that any fees, charges, or assessments bear a reasonable relationship to the infrastructure provided.

(2) Fees, charges, and assessments agreed upon under a contractual agreement entered into before April 1, 1991, or fees, charges, and assessments agreed upon under a contractual agreement, if the fees, charges, and assessments are treated as impact deductions under section 1321(d) of this chapter if an impact fee ordinance is in effect.

As added by P.L.221-1991, SEC.12.

IC 36-7-4-1312
Ordinance; prerequisites to adoption

Sec. 1312. (a) A unit may not adopt an impact fee ordinance under section 1311 of this series unless the unit has adopted a comprehensive plan under the 500 SERIES of this chapter for the geographic area over which the unit exercises planning and zoning jurisdiction.

(b) Before the adoption of an impact fee ordinance under section 1311 of this chapter, a unit shall establish an impact fee advisory committee. The advisory committee shall:

(1) be appointed by the executive of the unit;

(2) be composed of not less than five (5) and not more than ten (10) members with at least forty percent (40%) of the membership representing the development, building, or real estate industries; and

(3) serve in an advisory capacity to assist and advise the unit with regard to the adoption of an impact fee ordinance under section 1311 of this chapter.

(c) A planning commission or other committee in existence before the adoption of an impact fee ordinance that meets the membership requirements of subsection (b) may serve as the advisory committee that subsection (b) requires.

(d) Action of an advisory committee established under subsection (b) is not required as a prerequisite for the unit in adopting an impact fee ordinance under section 1311 of this chapter.

As added by P.L.221-1991, SEC.13.

IC 36-7-4-1313

Other permissible fees and charges of adopting unit

Sec. 1313. This series does not prohibit a unit from doing any of the following:

(1) Imposing a charge to pay the administrative, plan review, or inspection costs associated with a permit for development.

(2) Imposing, pursuant to a written commitment or agreement and as a condition or requirement attached to a development approval or authorization (including permitting or zoning decisions), an obligation to dedicate, construct, or contribute goods, services, land or interests in land, or infrastructure to a unit or to an infrastructure agency. However, if the unit adopts or has already adopted an impact fee ordinance under section 1311 of this chapter the following apply:

(A) The person dedicating, contributing, or providing an improvement under this subsection is entitled to a credit for the improvement under section 1335 of this chapter.

(B) The cost of complying with the condition or requirement imposed by the unit under this subdivision may not exceed the impact fee that could have been imposed by the unit under section 1321 of this chapter for the same infrastructure.

(3) Imposing new permit fees, charges, or assessments or amending existing permit fees, charges, or assessments. However, the permit fees, charges, or assessments must meet the requirements of section 1311(e)(1)(A), 1311(e)(1)(B), and 1311(e)(1)(C) of this chapter.

As added by P.L.221-1991, SEC.14.

IC 36-7-4-1314

Ordinance; application

Sec. 1314. (a) Except as provided in subsection (b), an impact fee ordinance must apply to any development:

(1) that is in an impact zone; and

(2) for which a unit may require a structural building permit.

(b) An impact fee ordinance may not apply to an improvement that does not create a need for additional infrastructure, including the erection of a sign, the construction of a fence, or the interior renovation of a building not resulting in a change in use.

As added by P.L.221-1991, SEC.15.

IC 36-7-4-1315

Ordinance; establishment of impact zones

Sec. 1315. (a) An impact fee ordinance must establish an impact zone, or a set of impact zones, for each infrastructure type covered by the ordinance. An impact zone established for a particular infrastructure type is not required to be congruent with an impact zone established for a different infrastructure type.

(b) An impact zone may not extend beyond the jurisdictional boundary of an infrastructure agency responsible for the infrastructure type for which the impact zone was established, unless an agreement under IC 36-1-7 is entered into by the infrastructure agencies.

(c) If an impact zone, or a set of impact zones, includes a geographic area containing territory from more than one (1) planning and zoning jurisdiction, the applicable legislative bodies and infrastructure agencies shall enter into an agreement under IC 36-1-7 concerning the collection, division, and distribution of the fees collected under the impact fee ordinance.

As added by P.L.221-1991, SEC.16.

IC 36-7-4-1316

Impact zones; geographical area

Sec. 1316. A unit must include in an impact zone designated under section 1315 of this chapter the geographical area necessary to ensure that:

(1) there is a functional relationship between the components of the infrastructure type in the impact zone;

(2) the infrastructure type provides a reasonably uniform benefit throughout the impact zone; and

(3) all areas included in the impact zone are contiguous.

As added by P.L.221-1991, SEC.17.

IC 36-7-4-1317

Ordinance; identification of responsible infrastructure agency

Sec. 1317. A unit must identify in the unit's impact fee ordinance the infrastructure agency that is responsible for acquiring, constructing, or providing each infrastructure type included in the impact fee ordinance.

As added by P.L.221-1991, SEC.18.

IC 36-7-4-1318

Ordinance; zone improvement plan preparation; contents of plan

Sec. 1318. (a) A unit may not adopt an impact fee ordinance under section 1311 of this chapter unless the unit has prepared or substantially updated a zone improvement plan for each impact zone during the immediately preceding one (1) year period. A single zone improvement plan may be used for two (2) or more infrastructure types if the impact zones for the infrastructure types are congruent.

(b) Each zone improvement plan must contain the following information:

(1) A description of the nature and location of existing infrastructure in the impact zone.

(2) A determination of the current level of service.

(3) Establishment of a community level of service. A unit may provide that the unit's current level of service is the unit's community level of service in the zone improvement plan.

(4) An estimate of the nature and location of development that is expected to occur in the impact zone during the following ten (10) year period.

(5) An estimate of the nature, location, and cost of infrastructure that is necessary to provide the community level of service for the development described in subdivision (4). The plan must indicate the proposed timing and sequencing of infrastructure installation.

(6) A general description of the sources and amounts of money used to pay for infrastructure during the previous five (5) years.

(c) If a zone improvement plan provides for raising the current level of service to a higher community level of service, the plan must:

(1) provide for completion of the infrastructure that is necessary to raise the current level of service to the community level of service within the following ten (10) year period;

(2) indicate the nature, location, and cost of infrastructure that is necessary to raise the current level of service to the community level of service; and

(3) identify the revenue sources and estimate the amount of the revenue sources that the unit intends to use to raise the current level of service to the community level of service for existing development. Revenue sources include, without limitation, any increase in revenues available from one (1) or more of the following:

(A) Adopting or increasing the following:

(i) The county adjusted gross income tax.

(ii) The county option income tax.

(iii) The county economic development income tax.

(iv) The annual license excise surtax.

(v) The wheel tax.

(B) Imposing the property tax rate per one hundred dollars ($100) of assessed valuation that the unit may impose to create a cumulative capital improvement fund under IC 36-9-14.5 or IC 36-9-15.5.

(C) Transferring and reserving for infrastructure purposes other general revenues that are currently not being used to pay for capital costs of infrastructure.

(D) Dedicating and reserving for infrastructure purposes any newly available revenues, whether from federal or state revenue sharing programs or from the adoption of newly authorized taxes.

(d) A unit must consult with a qualified engineer licensed to perform engineering services in Indiana when the unit is preparing the portions of the zone improvement plan described in subsections (b)(1), (b)(2), (b)(5), and (c)(2).

(e) A zone improvement plan and amendments and modifications to the zone improvement plan become effective after adoption as part of the comprehensive plan under the 500 SERIES of this chapter or adoption as part of the capital improvements program under section 503(5) of this chapter. If the unit establishing the impact fee schedule or formula and establishing the zone improvement plan is different from the unit having planning and zoning jurisdiction, the unit having planning and zoning jurisdiction shall incorporate the zone improvement plan as part of the unit's comprehensive plan and capital improvement plan.

(f) If a unit's zone improvement plan identifies revenue sources for raising the current level of service to the community level of service, impact fees may not be assessed or collected by the unit unless:

(1) before the effective date of the impact fee ordinance the unit has available or has adopted the revenue sources that the zone improvement plan specifies will be in effect before the impact fee ordinance becomes effective; and

(2) after the effective date of the impact fee ordinance the unit continues to provide adequate funds to defray the cost of raising the current level of service to the community level of service, using revenue sources specified in the zone improvement plan or revenue sources other than impact fees.

As added by P.L.221-1991, SEC.19.

IC 36-7-4-1319

Amendment to ordinance or zone improvement plan

Sec. 1319. (a) A unit shall amend a zone improvement plan to make adjustments in the nature, location, and cost of infrastructure and the timing or sequencing of infrastructure installations to respond to the nature and location of development occurring in the impact zone. Appropriate planning and analysis shall be carried out before an amendment is made to a zone improvement plan.

(b) A unit may not amend an impact fee ordinance if the amendment makes a significant change in an impact fee schedule or formula or if the amendment designates an impact zone or alters the boundary of a zone, unless a new or substantially updated zone improvement plan has been approved within the immediately preceding one (1) year period.

As added by P.L.221-1991, SEC.20.

IC 36-7-4-1320

Ordinance; fee schedule and formula

Sec. 1320. (a) An impact fee ordinance must include:

(1) a schedule prescribing for each impact zone the amount of the impact fee that is to be imposed for each infrastructure type covered by the ordinance; or

(2) a formula for each impact zone by which the amount of the impact fee that is to be imposed for each infrastructure type covered by the ordinance may be derived.

(b) A schedule or formula included in an impact fee ordinance must provide an objective and uniform standard for calculating impact fees that allows fee payers to accurately predict the impact fees that will be imposed on new development.

As added by P.L.221-1991, SEC.21.

IC 36-7-4-1321

Fee schedule or formula; requirements; limitations

Sec. 1321. (a) An impact fee schedule or formula described in section 1320 of this chapter shall be prepared so that the impact fee resulting from the application of the schedule or formula to a development meets the requirements of this section. However, this section does not require that a particular methodology be used in preparing the schedule or formula.

(b) As used in this section, "impact costs" means a reasonable estimate, made at the time the impact fee is assessed, of the proportionate share of the costs incurred or to be incurred by the unit in providing infrastructure of the applicable type in the impact zone that are necessary to provide the community level of service for the development. The amount of impact costs may not include the costs of infrastructure of the

applicable type needed to raise the current level of service in the impact zone to the community level of service in the impact zone for development that is existing at the time the impact fee is assessed.

(c) As used in this section, "nonlocal revenue" means a reasonable estimate, made at the time the impact fee is assessed, of revenue that:

(1) will be received from any source (including but not limited to state or federal grants) other than a local government source; and

(2) is to be used within the impact zone to defray the capital costs of providing infrastructure of the applicable type.

(d) As used in this section, "impact deductions" means a reasonable estimate, made at the time the impact fee is assessed, of the amounts from the following sources that will be paid during the ten (10) year period after assessment of the impact fee to defray the capital costs of providing infrastructure of the applicable types to serve a development:

(1) Taxes levied by the unit or on behalf of the unit by an applicable infrastructure agency that the fee payer and future owners of the development will pay for use within the geographic area of the unit.

(2) Charges and fees, other than fees paid by the fee payer under this chapter, that are imposed by any of the following for use within the geographic area of the unit:

(A) An applicable infrastructure agency.

(B) A governmental entity.

(C) A not-for-profit corporation created for governmental purposes.

Charges and fees covered by this subdivision include tap and availability charges paid for extension of services or the provision of infrastructure to the development.

(e) An impact fee on a development may not exceed:

(1) impact costs; minus

(2) the sum of nonlocal revenues and impact deductions.

As added by P.L.221-1991, SEC.22.

IC 36-7-4-1322

Fee assessment date; increase or decrease in fees; developments against which fees may not be assessed; existing contracts

Sec. 1322. (a) Except as provided in subsection (b), an impact fee ordinance must require that, if the fee payer requests, an impact fee on a development must be assessed not later than thirty (30) days after the earlier of:

(1) the date the fee payer obtains an improvement location permit for the development; or

(2) the date that the fee payer voluntarily submits to the unit a development plan for the development and evidence that the property is properly zoned for the proposed development. The plan shall be in the form prescribed by the unit's zoning ordinance and shall contain reasonably sufficient detail for the unit to calculate the impact fee.

(b) An impact fee ordinance may provide that if a proposed development is of a magnitude that will require revision of the zone improvement plan in order to appropriately serve the new development, the unit shall revise the unit's zone improvement plan and shall assess an impact fee on a development not later than one hundred eighty (180) days after the earlier of the following:

(1) The date on which the fee payer obtains an improvement location permit for the development.

(2) The date on which the fee payer submits to the unit a development plan for a development and evidence that the property is properly zoned for the proposed development. The development plan must be in the form prescribed by the unit's zoning ordinance and must contain reasonably sufficient detail for the unit to calculate the impact fee.

(c) An impact fee assessed under subsections (a) or (b) may be increased only if the structural building permit has not been issued for the development and the requirements of subsection (d) are satisfied. In the case of a phased development, only a portion of an impact fee assessed under subsection (a) or (b) that is attributable to the portion of the development for which a permit has not been issued may be increased if the requirements of subsection (d) are satisfied.

(d) Unless the improvement location permit or development plan originally submitted for the development is changed so that the amount of impact on infrastructure the development creates in the impact zone is significantly increased, an impact fee assessed under:

(1) subsection (a)(1) or (b)(1) may not be increased for the period of the improvement location permit's validity; and

(2) subsection (a)(2) or (b)(2) may not be increased for three (3) years.

(e) An impact fee assessed under subsection (a) or (b) shall be decreased if the improvement location permit or development plan originally submitted for the development is changed so that the amount of impact on infrastructure that the development creates in the impact zone is significantly decreased. If a change occurs in the permit or plan that results in a decrease in the amount of the impact fee after the fee has been paid, the unit that collected the fee shall immediately refund the amount of the overpayment to the fee payer.

(f) If the unit fails to assess an impact fee within the period required by subsection (a) or (b), the unit may not assess an impact fee on the development unless the development plan originally submitted for the development is materially and substantially changed.

(g) Notwithstanding other provisions in this chapter, a unit may not assess an impact fee against a development if:

(1) an improvement location permit has been issued for all or a part of a development before adoption of an impact fee ordinance that is in compliance with this chapter; and

(2) the development satisfies all of the following criteria:

(A) The development is zoned for commercial or industrial use before January 1, 1991.

(B) The development will consist primarily of new buildings or structures. As used in this clause, the term "new buildings or structures" does not include additions or expansions of existing buildings or structures.

(C) The parts of the development for which a structural building permit has not been issued are owned or controlled by the person that owned or controlled the development on January 1, 1991.

(D) A structural building permit is issued for the development not more than four (4) years after the effective date of the impact fee ordinance.

(E) The development is part of a common scheme of development that:

(i) involves land that is contiguous;

(ii) involves a plan for development that includes a survey of the land, engineering drawings, and a site plan showing the anticipated size, location, and use of buildings and the anticipated location of streets, sewers, and drainage;

(iii) if plan approval is required, resulted in an application being filed with an appropriate office, commission, or official of the unit before January 1, 1991, that resulted or may result in approval of any phase of the development plan referred to in item (ii);

(iv) has been diligently pursued since January 1, 1991;

(v) resulted before January 1, 1991, in a substantial investment in creating, publicizing, or implementing the common scheme of development; and

(vi) involved the expenditure of significant funds before January 1, 1991, for the provision of improvements, such as roads, sewers, water treatment facilities, water storage facilities, water distribution facilities, drainage systems, or parks, that are on public lands or are available for other development in the area.

(h) Notwithstanding any other provision of this chapter, this chapter does not impair the validity of any contract between a unit and a fee payer that was:

(1) entered into before January 1, 1991; and

(2) executed in consideration of zoning amendments or annexations requested by the fee payer.

As added by P.L.221-1991, SEC.23.

IC 36-7-4-1323

Fee due date; proration; repeal or lapse of ordinance

Sec. 1323. (a) Except as provided in section 1324 of this chapter, an impact fee assessed in compliance with section 1322 of this chapter is due and payable on the date of issuance of the structural building permit for the new development on which the impact fee is imposed.

(b) For a phased development, an impact fee shall be prorated for purposes of payment according to the impact of the parcel for which a structural building permit is issued in relation to the total impact of the

development. In accordance with section 1324 of this chapter, only the prorated portion of the assessed impact fee is due and payable on the issuance of the permit.

(c) If an impact fee ordinance is repealed, lapses, or becomes ineffective after the assessment of an impact fee on a development but before the issuance of the structural building permit for part or all of the development:

(1) any part of the impact fee attributable to the part of the development for which a structural building permit has not been issued is void and is not due and payable, in the case of a phased development; and

(2) the entire impact fee is void and is not due and payable, in the case of a development other than a phased development.

As added by P.L.221-1991, SEC.24.

IC 36-7-4-1324

Ordinance; installment payment plan; fee upon permit issuance; interest; penalty for late payment

Sec. 1324. (a) An impact fee ordinance must include an installment payment plan. The installment payment plan must at least offer a fee payer the option of paying part of an impact fee in equal installment payments if the impact fee is greater than five thousand dollars ($5,000). In an installment plan under this section:

(1) a maximum of five thousand dollars ($5,000) or five percent (5%) of the impact fee, whichever is greater, may become payable on the date the structural building permit is issued for the development on which the fee is imposed;

(2) the first installment may not become due and payable less than one (1) year after the date the structural building permit is issued for the development on which the fee is imposed; and

(3) the last installment may not be due and payable less than two (2) years after the date the structural building permit is issued for the development on which the fee is imposed.

(b) An impact fee ordinance may require an impact fee of five thousand dollars ($5,000) or less to be paid in full on the date the structural building permit is issued for the development on which the impact fee is imposed.

(c) An impact fee ordinance may provide that a reasonable rate of interest, not to exceed the prejudgment rate of interest in effect at the time the interest accrues, may be charged if the fee payer elects to pay in installments. If interest is charged, the ordinance must provide that interest accrues only on the portion of the impact fee that is outstanding and does not begin to accrue until the date the structural building permit is issued for the development or the part of the development on which the impact fee is imposed.

(d) An impact fee ordinance may provide that if all or part of an installment is not paid when due and payable, the amount of the installment shall be increased on the first day after the installment is due and payable by a penalty amount equal to ten percent (10%) of the installment amount that is overdue. If interest is charged under subsection (c), the interest shall be charged on the penalty amount.

As added by P.L.221-1991, SEC.25.

IC 36-7-4-1325

Collection of unpaid fees; lien; receipt for payments

Sec. 1325. (a) A unit may use any legal remedy to collect an impact fee imposed by the unit. A unit must bring an action to collect an impact fee and all penalties, costs, and collection expenses associated with a fee not later than ten (10) years after the fee or the prorated portion of the impact fee first becomes due and payable.

(b) On the date a structural building permit is issued for the development of property on which the impact fee is assessed, the unit acquires a lien on the real property for which the permit is issued. For a phased development, the amount of the lien may not exceed the prorated portion of the impact fee due and payable in one (1) or more installments at the time the structural building permit is issued.

(c) A lien acquired by a unit under this section is not affected by a sale or transfer of the real property subject to the lien, including the sale, exchange, or lease of the real property under IC 36-1-11.

(d) A lien acquired by a unit under this section continues for ten (10) years after the impact fee or the prorated portion of the impact fee becomes due and payable. However, if an action to enforce the lien is filed within the ten (10) year period, the lien continues until the termination of the proceeding.

(e) A holder of a lien of record on any real property on which an impact fee is delinquent may pay the delinquent impact fee and any penalties and costs. The amount paid by the lien holder is an additional lien on the real property in favor of the lien holder and is collectible in the same manner as the original lien.

(f) If a person pays an impact fee assessed against any real property, the person is entitled to a receipt for the payment that is:

(1) on a form prescribed by the impact fee ordinance; and

(2) issued by a person designated in the impact fee ordinance.

As added by P.L.221-1991, SEC.26.

IC 36-7-4-1326

Ordinance; special reduced rates for affordable housing development

Sec. 1326. (a) An impact fee ordinance may provide for a reduction in an impact fee for housing development that provides sale or rental housing, or both, at a price that is affordable to an individual or a family earning less than eighty percent (80%) of the median income for the county in which the housing development is located. If the housing development comprises more than one (1) residential unit, the impact fee reduction shall apply only to the residential units that are affordable to an individual or a family earning less than eighty percent (80%) of the median income of the county.

(b) If the impact fee ordinance provides for a reduction in an impact fee under subsection (a), the ordinance must:

(1) contain a schedule or formula that sets forth the amount of the fee reduction for various types of housing development specified in subsection (a);

(2) require that, as a condition of receiving the fee reduction, the owner execute an agreement that:

(A) is binding for a period of at least five (5) years on the owner and subsequent owners; and

(B) limits the tenancy of residential units receiving the fee reduction to individuals or families who at the time the tenancy is initiated are earning less than eighty percent (80%) of the median income of the county;

(3) contain standards to be used in determining if a particular housing development specified in subsection (a) will receive a fee reduction; and

(4) designate a board or an official of the unit to conduct the hearing required by subsection (c).

(c) A fee reduction authorized by this section must be approved by a board or official of the unit at a public hearing.

As added by P.L.221-1991, SEC.27.

IC 36-7-4-1327

Fee reduction; appeal procedures

Sec. 1327. An impact fee ordinance must provide a procedure through which the fee reduction decision made under section 1326 of this chapter may be appealed by the following persons:

(1) The person requesting the fee reduction.

(2) An infrastructure agency responsible for infrastructure of the applicable type for the impact zone in which the impact fee reduction is granted.

As added by P.L.221-1991, SEC.28.

IC 36-7-4-1328

Fee reduction; complementary payment by granting unit

Sec. 1328. A unit that provides a fee reduction under section 1326 of this chapter shall pay into the account or accounts established for the impact zone in which the fee was reduced an amount equal to the amount of the fee reduction.

As added by P.L.221-1991, SEC.29.

IC 36-7-4-1329

Fund for impact fee collections; establishment; management; reports

Sec. 1329. (a) A unit imposing an impact fee shall establish a fund to receive amounts collected under this series.

(b) Money in a fund established under subsection (a) at the end of the unit's fiscal year remains in the fund. Interest earned by the fund shall be deposited in the fund.

(c) The fiscal officer of the unit shall manage the fund according to the provisions of this series. The fiscal officer shall annually report to the unit's plan commission and to each infrastructure agency responsible for infrastructure in an impact zone. The report must include the following:

(1) The amount of money in accounts established for the impact zone.

(2) The total receipts and disbursements of the accounts established for the impact zone.

(d) A separate account shall be established in the fund for each impact zone established by the unit and for each infrastructure type within each zone. Interest earned by an account shall be deposited in that account.
As added by P.L.221-1991, SEC.30.

IC 36-7-4-1330
Use of fees

Sec. 1330. An impact fee collected under this series shall be used for the following purposes:

(1) Providing funds to an infrastructure agency for the provision of new infrastructure that:

(A) is necessary to serve the new development in the impact zone from which the fee was collected; and

(B) is identified in the zone improvement plan.

(2) In an amount not to exceed five percent (5%) of the annual collections of an impact fee, for expenses incurred by the unit that paid for the consulting services that were used to establish the impact fee ordinance.

(3) Payment of a refund under section 1332 of this chapter.

(4) Payment of debt service on an obligation issued to provide infrastructure described in subdivision (1).
As added by P.L.221-1991, SEC.31.

IC 36-7-4-1331
Infrastructure construction

Sec. 1331. (a) An infrastructure agency shall, within the time described in the zone improvement plan, construct infrastructure for which:

(1) a zone improvement plan has been adopted;

(2) an impact zone has been established; and

(3) an impact fee has been collected.

(b) A unit may amend the unit's zone improvement plan, including the time provided in the plan for construction of infrastructure, only if the amount of expenditures provided for the construction of infrastructure in the original plan does not decrease in any year and the benefit to the overall impact zone does not decrease because of the amendment.
As added by P.L.221-1991, SEC.32.

IC 36-7-4-1332
Impact fee refunds

Sec. 1332. (a) A fee payer is entitled to a refund of an impact fee if an infrastructure agency:

(1) has failed to complete a part of the infrastructure for which the impact fee was imposed not later than:

(A) twenty-four (24) months after the time described in section 1331 of this chapter; or

(B) a longer time as is reasonably necessary to complete the infrastructure if unforeseeable and extraordinary circumstances that are not in whole or in part caused by the unit have delayed the construction;

(2) has unreasonably denied the fee payer the use and benefit of the infrastructure during the useful life of the infrastructure; or

(3) has failed within the earlier of:

(A) six (6) years after issuance of the structural building permit; or

(B) the anticipated infrastructure completion date as specified in the zone improvement plan existing on the date the impact fee was collected;

to make reasonable progress toward completion of the specific infrastructure for which the impact fee was imposed or thereafter fails to make reasonable progress toward completion.

(b) An application for a refund under subsection (a) must be filed with the unit that imposed the impact fee not later than two (2) years after the right to a refund accrues. A unit shall issue a refund in part or in full or shall reject the application for refund not later than thirty (30) days after receiving an application for a refund.

(c) If a unit approves a refund in whole or in part, the unit shall pay the amount approved, plus interest from the date on which the impact fee was paid to the date the refund is issued. The interest rate shall be the same rate as the rate that the unit's impact fee ordinance provides for impact fee payments paid in installments.

(d) If a unit rejects an application for refund or approves only a partial refund, the fee payer may appeal not later than sixty (60) days after the rejection or partial approval to the unit's impact fee review board established under section 1338 of this chapter by filing with the board an appeal on a form prescribed by the board. The board shall issue instructions for completion of the form. The form and the instructions must be clear, simple, and understandable to a lay person.

(e) An impact fee ordinance shall designate the employee or official of the unit who is responsible for accepting, rejecting, and paying a refund and interest.

(f) A unit's impact fee review board shall hold a hearing on all appeals for a refund under this section. The hearing shall be held not later than forty-five (45) days after the application for appeal is filed with the board. A unit's impact fee review board shall provide notice of the application for refund to the infrastructure agency responsible for the infrastructure for which the impact fee was imposed.

(g) An impact fee review board holding a hearing under subsection (f) shall determine the amount of a refund that shall be made to the fee payer from the account established for the infrastructure for which the fee was imposed. A refund ordered by the board must include interest from the date the impact fee was paid to the date the refund is issued at the same rate the ordinance provides for impact fee payments paid in installments.

(h) A party aggrieved by a final decision of an impact fee review board in a hearing under subsection (f) may appeal to the circuit or superior court of the county in which the unit is located and is entitled to a trial de novo.

As added by P.L.221-1991, SEC.33.

IC 36-7-4-1333

Impact fees; appeal of amount before impact review board; judicial review; effect on pending fee payments

Sec. 1333. (a) A person against whom an impact fee has been assessed may appeal the amount of the impact fee. A unit may not deny issuance of a structural building permit on the basis that an impact fee has not been paid or condition issuance of the permit on the payment of an impact fee. However, in the case of an impact fee of one thousand dollars ($1,000) or less a unit may require a fee payer to:

(1) pay the impact fee; or

(2) bring an appeal under this section;

before the unit issues a structural building permit for the development for which the impact fee was assessed.

(b) A person must file a petition for a review of the amount of an impact fee with the unit's impact fee review board not later than thirty (30) days after issuance of the structural building permit for the development for which the impact fee was assessed. An impact fee ordinance may require a petition to be accompanied by payment of a reasonable fee not to exceed one hundred dollars ($100). A fee payer shall receive a full refund of the filing fee if:

(1) the fee payer prevails;

(2) the amount of the impact fee or the reductions or credits against the fee is adjusted by the unit, the board, or a court; and

(3) the body ordering the adjustment finds that the amount of the fee, reductions, or credits were arbitrary or capricious.

(c) A unit's impact fee review board shall prescribe the form of the petition for review of an impact fee under subsection (b). The board shall issue instructions for completion of the form. The form and the instructions must be clear, simple, and understandable to a lay person. The form must require the petitioner to specify:

(1) a description of the new development on which the impact fee has been assessed;

(2) all facts related to the assessment of the impact fee; and

(3) the reasons the petitioner believes that the amount of the impact fee assessed is erroneous or is greater than the amount allowed by the fee limitations set forth in this series.

(d) A unit's impact fee review board shall prescribe a form for a response by a unit to a petition for review under this section. The board shall issue instructions for completion of the form. The form must require the unit to indicate:

(1) agreement or disagreement with each item indicated on the petition for review under subsection (c); and

(2) the reasons the unit believes that the amount of the fee assessed is correct.

(e) Immediately upon the receipt of a timely filed petition on the form prescribed under subsection (c), a unit's impact fee review board shall provide a copy of the petition to the unit assessing the impact fee. The unit shall not later than thirty (30) days after the receipt of the petition provide to the board a completed response to the petition on the form prescribed under subsection (d). The board shall immediately forward a copy of the response form to the petitioner.

(f) An impact fee review board shall:

(1) review the petition and the response submitted under this section; and

(2) determine the appropriate amount of the impact fee not later than thirty (30) days after submission of both petitions.

(g) A fee payer aggrieved by a final determination of an impact fee review board may appeal to the circuit or superior court of the county in which the unit is located and is entitled to a trial de novo. If the assessment of a fee is vacated by judgment of the court, the assessment of the impact fee shall be remanded to the board for correction of the impact fee assessment and further proceedings in accordance with law.

(h) If a petition for a review or an appeal of an impact fee assessment is pending, the impact fee is not due and payable until after the petition or appeal is finally adjudicated and the amount of the fee is determined.
As added by P.L.221-1991, SEC.34.

IC 36-7-4-1334
Ordinance; appeal provision for amount of fees

Sec. 1334. An impact fee ordinance must set forth the reasons for which an appeal of the amount of an impact fee may be made. The impact fee ordinance must provide that an appeal of the amount of an impact fee may be made for the following reasons:

(1) A fact assumption used in determining the amount of an impact fee is incorrect.

(2) The amount of the impact fee is greater than the amount allowed under sections 1320, 1321, and 1322 of this chapter.
As added by P.L.221-1991, SEC.35.

IC 36-7-4-1335
Fee payer credits; infrastructure or improvements; amount of credit

Sec. 1335. (a) As used in this section, "improvement" means an improvement under section 1313(2) of this chapter or a site improvement, land, or real property interest as follows:

(1) That is to be used for at least one (1) of the infrastructure purposes specified in section 1309 of this chapter.

(2) That is included in or intended to be used relative to an infrastructure type for which the unit has imposed an impact fee in the impact zone.

(3) That is not a type of improvement that is uniformly required by law or rule for the type of development on which the impact fee has been imposed.

(4) That is or will be:

(A) public property; or

(B) furnished or constructed under requirements of the unit and is or will be available for use by other development in the area.

(5) That is beneficial to existing development and future development in the impact zone and is not beneficial to only one (1) development.

(6) That either:

(A) allows the removal of a component of infrastructure planned for the impact zone;

(B) is a useful addition to the zone improvement plan; or

(C) is reasonably likely to be included in a future zone improvement plan for the impact zone.

(7) That is:

(A) constructed, furnished, or guaranteed by a bond or letter of credit under a request by an authorized official of the:

(i) applicable infrastructure agency; or

(ii) unit that imposed the impact fee; or

(B) required to be constructed or furnished under a written commitment that:

(i) is requested by an authorized official of the applicable infrastructure agency or the unit that imposed the impact fee;

(ii) concerns the use or developing of the development against which the impact fee is imposed; and

(iii) is made under section 613, 614, or 921 of this chapter.

(b) A fee payer is entitled to a credit against an impact fee if the owner or developer of the development constructs or provides:

(1) infrastructure that is an infrastructure type for which the unit imposed an impact fee in the impact zone; or

(2) an improvement.

(c) A fee payer is entitled to a credit under this section for infrastructure or an improvement that:

(1) is constructed or furnished relative to a development after January 1, 1989; and

(2) meets the requirements of this section.

(d) The amount of a credit allowed under this section shall be determined at the date the impact fee is assessed. However, if an assessment is not requested, the amount of the credit shall be determined at the time the structural building permit is issued. The amount of the credit shall be:

(1) determined by the:

(A) person constructing or providing the infrastructure or improvement; and

(B) applicable infrastructure agency; and

(2) equal to the sum of the following:

(A) The cost of constructing or providing the infrastructure or improvement.

(B) The fair market value of land, real property interests, and site improvements provided.

(e) The amount of a credit may be increased or decreased after the date the impact fee is assessed if, between the date the impact fee is assessed and the date the structural building permit is issued, there is a substantial and material change in the cost or value of the infrastructure or improvement that is constructed or furnished from the cost or value determined under subsection (d). However, at the time the amount of a credit is determined under subsection (d), the person providing the infrastructure or improvement and the applicable infrastructure agency may agree that the amount of the credit may not be changed. The person providing the infrastructure or improvement may waive the person's right to a credit under this section.
As added by P.L.221-1991, SEC.36.

IC 36-7-4-1336

Fee payer credits; petition to determine amount; proceeding before impact review board

Sec. 1336. (a) If the parties cannot agree on the cost or fair market value under section 1335(d) of this chapter, the fee payer or the person constructing or providing the infrastructure or improvement may file a petition for determination of the amount of the credit with the unit's impact fee review board not later than thirty (30) days after the structural building permit is issued for the development on which the impact fee is imposed. A petition under this subsection may be made as part of an appeal proceeding under section 1334 of this chapter or may be made under this section.

(b) An impact fee review board shall prescribe the form of the petition for determination of the amount of a credit under this section. The board shall issue instructions for completion of the form. The form and the instructions must be clear, simple, and understandable to a lay person.

(c) An impact fee review board shall prescribe a form for a response by the applicable infrastructure agency to a petition under this section for determination of a credit amount. The board shall issue instructions for completion of the form.

(d) Immediately after receiving a timely filed petition under this section for determination of a credit amount, an impact fee review board shall provide a copy of the petition to the applicable infrastructure agency. Not later than thirty (30) days after receiving a copy of the petition, the infrastructure agency shall provide to the board a response on the form prescribed under subsection (c). The board shall immediately provide the petitioner with a copy of the infrastructure agency's response.

(e) The impact fee review board shall:

(1) review a petition and response filed under this section; and

(2) determine the amount of the credit not later than thirty (30) days after the response is filed.

(f) A fee payer aggrieved by a final determination of an impact fee review board under this section:

(1) may appeal to the circuit or superior court of the county in which the unit is located; and

(2) is entitled to a trial de novo.

As added by P.L.221-1991, SEC.37.

IC 36-7-4-1337

Ordinance; allocation of credits to fee payer provisions

Sec. 1337. An impact fee ordinance shall do the following:

(1) Establish a method for reasonably allocating credits to fee payers in situations in which the person providing infrastructure or an improvement is not the fee payer.

(2) Allow the person providing infrastructure or an improvement to designate in writing a reasonable and administratively feasible method of allocating credits to future fee payers.

As added by P.L.221-1991, SEC.38.

IC 36-7-4-1338

Impact fee review board; membership; powers and duties

Sec. 1338. (a) Each unit that adopts an impact fee ordinance shall establish an impact fee review board consisting of three (3) citizen members appointed by the executive of the unit. A member of the board may not be a member of the plan commission. An impact fee ordinance must do the following:

(1) Set the terms the members shall serve on the board.

(2) Establish a procedure through which the unit's executive shall appoint a temporary replacement member meeting the qualifications of the member being replaced in the case of conflict of interest.

(b) An impact fee review board must consist of the following members:

(1) One (1) member who is a real estate broker licensed in Indiana.

(2) One (1) member who is an engineer licensed in Indiana.

(3) One (1) member who is a certified public accountant.

(c) An impact fee review board shall review the amount of an impact fee assessed, the amount of a refund, and the amount of a credit using the following procedures:

(1) The board shall fix a reasonable time for the hearing of appeals.

(2) At a hearing, each party may appear and present evidence in person, by agent, or by attorney.

(3) A person may not communicate with a member of the board before the hearing with intent to influence the member's action on a matter pending before the board.

(4) The board may reverse, affirm, modify, or otherwise establish the amount of an impact fee, a credit, a refund, or any combination of fees, credits, or refunds. For purposes of this subdivision, the board has all the powers of the official of the unit from which the appeal is taken.

(5) The board shall decide a matter that the board is required to hear:

(A) at the hearing at which the matter is first presented; or

(B) at the conclusion of the hearing on the matter, if the matter is continued.

(6) Within five (5) days after making a decision, the board shall provide a copy of the decision to the unit and the fee payer involved in the appeal.

(7) The board shall make written findings of fact to support the board's decision.

As added by P.L.221-1991, SEC.39.

IC 36-7-4-1339

Declaratory relief; challenge of ordinance

Sec. 1339. (a) This section applies to a person having an interest in real property that may be subject to an impact fee ordinance if the development occurs on the property.

(b) A person may seek to:

(1) have a court determine under IC 34-26-1 any question of construction or validity arising under the impact fee ordinance; and

(2) obtain a declaration of rights, status, or other legal relations under the ordinance.

(c) The validity of an impact fee ordinance adopted by a unit or the validity of the application of the ordinance in a specific impact zone may be challenged under this section on any of the following grounds:

(1) The unit has not provided for a zone improvement plan in the unit's comprehensive plan.

(2) The unit did not prepare or substantially update the unit's zone improvement plan in the year preceding the adoption of the impact fee ordinance.

(3) The unit has not identified the revenue sources the unit intends to use to implement the zone improvement plan, if identification of the revenue sources is required under section 1318(c) of this chapter.

(4) The unit has not complied with the requirements of section 1318(f) of this chapter.

(5) The unit has not made adequate revenue available to complete infrastructure improvements identified in the unit's zone improvement plan.

(6) The impact fee ordinance imposes fees on new development that will not create a need for additional infrastructure.

(7) The impact fee ordinance imposes on new development fees that are excessive in relation to the infrastructure needs created by the new development.

(8) The impact fee ordinance does not allow for reasonable credits to fee payers.

(9) The unit imposed a prohibition or delay on new development to enable the unit to complete the adoption of an impact fee ordinance.

(10) The unit otherwise fails to comply with this series in the adoption of an impact fee ordinance.

As added by P.L.221-1991, SEC.40. Amended by P.L.1-1998, SEC.206.

IC 36-7-4-1340

Ordinance; effective date; duration; replacement

Sec. 1340. (a) An impact fee ordinance may take effect not earlier than six (6) months after the date on which the impact fee ordinance is adopted by a legislative body.

(b) An impact fee may not be collected under an impact fee ordinance more than five (5) years after the effective date of the ordinance. However, a unit may adopt a replacement impact fee ordinance if the replacement impact fee ordinance complies with the provisions of this series.

As added by P.L.221-1991, SEC.41.

IC 36-7-4-1341

Delay of new development pending fee process

Sec. 1341. A unit may not prohibit or delay new development to wait for the completion of all or a part of the process necessary for the development, adoption, or updating of an impact fee.

As added by P.L.221-1991, SEC.42.

IC 36-7-4-1342

Application of 1300 Series to certain towns; expiration of provision

Sec. 1342. The general assembly finds that the powers of a local governmental unit to permit and provide for infrastructure are not limited by the provisions of this chapter except as expressly provided in this chapter.

As added by P.L.221-1991, SEC.43.IC 36-7-4-1300

Maine Impact Fee Act

[downloaded February 9, 2005]

Title 30-A: MUNICIPALITIES AND COUNTIES
Part 2: MUNICIPALITIES
Subpart 6-A: PLANNING AND LAND USE REGULATION
Chapter 187: PLANNING AND LAND USE REGULATION
Subchapter 3: LAND USE REGULATION

§ 4354. Impact fees

A municipality may enact an ordinance under its home rule authority requiring the construction of off-site capital improvements or the payment of impact fees instead of the construction. Notwithstanding section 3442, subsection 2, an impact fee may be imposed that results in a developer or developers paying the entire cost of an infrastructure improvement. A municipality may impose an impact fee either before or after completing the infrastructure improvement. [1991, c. 722, §§8 (rpr); §§11 (aff).]

1. Construction or fees may be required. The requirements may include construction of capital improvements or impact fees instead of capital improvements including the expansion or replacement of existing infrastructure facilities and the construction of new infrastructure facilities.

A. For the purposes of this subsection, infrastructure facilities include, but are not limited to:

(1) Waste water collection and treatment facilities;

(2) Municipal water facilities;

(3) Solid waste facilities;

(4) Public safety equipment and facilities;

(5) Roads and traffic control devices; and

(6) Parks and other open space or recreational areas, and

(7)School facilities.
[1999, c. 776, §§11]

2. Restrictions. Any ordinance that imposes or provides for the imposition of impact fees must meet the following requirements.

A. The amount of the fee must be reasonably related to the development's share of the cost of infrastructure improvements made necessary by the development or, if the improvements were constructed at municipal expense prior to the development, the fee must be reasonably related to the portion or percentage of the infrastructure used by the development. [1991, c. 18, §§3 (amd).]

B. Funds received from impact fees must be segregated from the municipality's general revenues. The municipality shall expend the funds solely for the purposes for which they were collected. [1989, c. 104, Pt. A, §§45 and Pt. C, §§10 (new).]

C. The ordinance must establish a reasonable schedule under which the municipality is required to use the funds in a manner consistent with the capital investment component of the comprehensive plan. [1989, c. 104, Pt. A, §§45 and Pt. C, §§10 (new).]

D. The ordinance must establish a mechanism by which the municipality shall refund impact fees, or that portion of impact fees, actually paid that exceed the municipality's actual costs or that were not expended according to the schedule under this subsection. [1989, c. 104, Pt. A, §§45 and Pt. C, §§10 (new); c. 562, §§17 (amd).]

E. [1989, c. 104, Pt. A, §45 and Pt. C, §10 (new); c. 562, §18 (rp).]
[1991, c. 18, §2 (amd).]

3. Deposit fees in trust fund. Municipalities that are part of a school administrative district or other single or multicommunity school district may deposit collected impact fees in a trust fund to be used to pay their proportionate share of anticipated school capital costs. [2001, c. 38, §§1 (new).]

Section History: 1989, c. 104, § A45,C10 (NEW).
1989, c. 562, § 16-18 (AMD).
1991, c. 18, § 2,3 (AMD).
1991, c. 236, § 2 (AMD).
1991, c. 722, § 11 (AFF).
1991, c. 722, § 8 (AMD).

Maryland Impact Fee Provisions

[downloaded February 28, 2011]

For additional information on impact fee and excise tax authority and usage in Maryland, see "Managing Growth: The Use of Development Impact Fees and Building Excise Taxes in Maryland," 2011 Supplement, Department of Legislative Services, Office of Policy Analysis, Annapolis, Maryland, January 2011. Some excerpts:

> "Under the Maryland Constitution, a municipality must have the express authorization of the General Assembly before it may impose any type of new tax or fee. In an opinion from 2004, the Maryland Attorney General concluded that a municipality could impose an impact fee as a valid regulatory measure. However, to constitute a valid regulatory fee, the municipality would need to show a reasonable connection between the new development and infrastructure as well as a reasonable connection between use of the resulting revenues and benefit to the property assessed."
>
> "The question of whether and how takings law applies to impact fees, and what restrictions it may impose on them, however, appears to be unresolved."
>
> "The original 2008 Managing Growth: The Use of Development Impact Fees and Excise Taxes in Maryland report defined impact fees as regulatory measures and described a distinction between impact fees and excise taxes based on principles stated in the 1990 Eastern Diversified v. Montgomery County Maryland Court of Appeals opinion and a 2004 Maryland Attorney General opinion. The report indicated that an impact fee must be designed to fund facilities specifically required by new development projects; there must be a reasonable connection between the amount of an impact fee and the actual cost of providing facilities to the property assessed; and the revenue from the fee must be dedicated to substantially benefit those properties. The report indicated that the amount of an excise tax, on the other hand, does not have to be closely related to the actual cost of providing public facilities to serve new development, and excise tax revenue does not have to be spent to specifically benefit the properties that are taxed."
>
> "Development impact fees and building excise taxes, as characterized in this supplement, however, do not necessarily encompass all charges that are imposed by counties on new development to help pay for new or expanded public facilities. Some jurisdictions, for example, impose water- and sewer-related charges affecting new development, such as connection charges or system development charges, that may serve a similar purpose as impact fees or excise taxes, generating revenue for costs associated with new or expanded facilities. In addition, though not focused on in the 2008 Managing Growth report or this or previous supplements, a number of municipal corporations impose impact fees or similar charges on new development."

Article 25B: Home Rule for Code Counties
Sec. 13: Powers of Code Counties

§ 13D. Development impact fees.

The county commissioners of a code county, by public local law, may fix, impose, and provide for the collection of development impact fees for financing, in whole or in part, the capital costs of additional or expanded public works, improvements and facilities required to accommodate new construction or development.

§ 13F. Development excise tax - School construction.

(a) Imposition.-

(1) The county commissioners of a code county, by public local law, may impose a development excise tax when a subdivision lot is initially sold or transferred, for financing, in whole or in part, the capital costs of additional or expanded public school facilities or improvements.

(2) (i) Before passing a public local law imposing a development excise tax or altering the amount of the tax, the county commissioners shall hold a public hearing.

(ii) Notice of the hearing shall be published in at least one newspaper of general circulation in the county not less than 3 or more than 14 days before the hearing.

(iii) The notice shall state the subject of the hearing and the time and place that the hearing will occur.

(3) The county commissioners shall specify and the notice shall state the amount of the tax and the time during the subdivision process that the tax shall be paid.

(4) Except as provided in paragraph (6) of this subsection, a development excise tax imposed under this section may not exceed $2,000 per lot.

(5) A development excise tax may not be imposed under this section, in a county that imposes a development impact fee.

(6) A development excise tax imposed under this section by a code county in the Eastern Shore class may not exceed $5,000 per lot.

(b) Educational facilities improvement fund.-

(1) The county commissioners shall deposit development excise taxes in an account known as the "educational facilities improvement fund".

(2) Money in the educational facilities improvement fund may only be used to pay for capital projects, or for debt incurred for capital projects, for additional or expanded public school facilities or improvements.

[1993, ch. 565; 2003, ch. 474; 2004, ch. 538.]

§ 13G. Same - Agricultural land preservation.

(a) Imposition generally.-

(1) The county commissioners of a code county, by public local law, may impose a development excise tax when a subdivision lot is initially sold or transferred, for financing, in whole or in part, the costs of purchasing development rights on agricultural land.

(2) (i) Before passing a public local law imposing a development excise tax or altering the amount of the tax, the county commissioners shall hold a public hearing.

(ii) Notice of the hearing shall be published in at least one newspaper of general circulation in the county not less than 3 or more than 14 days before the hearing.

(iii) The notice shall state the subject of the hearing and the time and place that the hearing will occur.

(3) The county commissioners shall specify and the notice shall state the amount of the tax and the time during the subdivision process that the tax shall be paid.

(4) A development excise tax imposed under this section may not exceed $750 per lot.

(5) A development excise tax may not be imposed under this section, in a county that imposes a development impact fee.

(b) Agricultural land preservation fund.-

(1) The county commissioners shall deposit development excise taxes in an account known as the "agricultural land preservation fund".

(2) Money in the agricultural land preservation fund may only be used to pay for the purchase of development rights on agricultural land.

Real Property
Title 14: Miscellaneous Rules
Subtitle 1: Miscellaneous Rules

(h) Development impact fees.-

(1) This subsection applies to Prince George's County.

(2) A contract for the sale of real property on which a development impact fee has been imposed shall contain a notice to the purchaser stating:

(i) That a development impact fee has been imposed on the property;

(ii) The total amount of the impact fee that has been imposed on the property; and

(iii) The amount of the impact fee, if any, that is unpaid on the date of the contract for the sale of the property.

(3) Violation of paragraph (2) of this subsection entitles the initial purchaser to recover from the seller:

(i) Two times the amount of development impact fees the purchaser would be obligated to pay following the sale;

(ii) No amount greater than actually paid thereafter; and

(iii) Any deposit moneys actually paid by the purchaser that were lost as a result of violation of paragraph (2) of this subsection.

Missouri Hancock Amendment

Note: Adopted by state-wide referendum, requires cities to get voter approval before adopting or increasing impact fees.

Missouri Constitution

Article X: TAXATION

Section 22.

(a) Counties and other political subdivisions are hereby prohibited from levying any tax, license or fees, not authorized by law, charter or self-enforcing provisions of the constitution when this section is adopted or from increasing the current levy of an existing tax, license or fees, above that current levy authorized by law or charter when this section is adopted without the approval of the required majority of the qualified voters of that county or other political subdivision voting thereon. If the definition of the base of an existing tax, license or fees, is broadened, the maximum authorized current levy of taxation on the new base in each county or other political subdivision shall be reduced to yield the same estimated gross revenue as on the prior base. If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the general price level from the previous year, the maximum authorized current levy applied thereto in each county or other political subdivision shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the general price level, as could have been collected at the existing authorized levy on the prior assessed value.

(b) The limitations of this section shall not apply to taxes imposed for the payment of principal and interest on bonds or other evidence of indebtedness or for the payment of assessments on contract obligations in anticipation of which bonds are issued which were authorized prior to the effective date of this section.

(Adopted November 4, 1980).

Montana Impact Fee Act

[downloaded February 5, 2021]

Montana Code Annotated 2019
TITLE 7. LOCAL GOVERNMENT
CHAPTER 6. FINANCIAL ADMINISTRATION AND TAXATION
Part 16. Impact Fees to Fund Capital Improvements

Definitions

7-6-1601. Definitions. As used in this part, the following definitions apply:

(1) (a) "Capital improvements" means improvements, land, and equipment with a useful life of 10 years or more that increase or improve the service capacity of a public facility.

(b) The term does not include consumable supplies.

(2) "Connection charge" means the actual cost of connecting a property to a public utility system and is limited to the labor, materials, and overhead involved in making connections and installing meters.

(3) "Development" means construction, renovation, or installation of a building or structure, a change in use of a building or structure, or a change in the use of land when the construction, installation, or other action creates additional demand for public facilities.

(4) "Governmental entity" means a county, city, town, or consolidated government.

(5) (a) "Impact fee" means any charge imposed upon development by a governmental entity as part of the development approval process to fund the additional service capacity required by the development from which it is collected. An impact fee may include a fee for the administration of the impact fee not to exceed 5% of the total impact fee collected.

(b) The term does not include:

(i) a charge or fee to pay for administration, plan review, or inspection costs associated with a permit required for development;

(ii) a connection charge;

(iii) any other fee authorized by law, including but not limited to user fees, special improvement district assessments, fees authorized under Title 7 for county, municipal, and consolidated government sewer and water districts and systems, and costs of ongoing maintenance; or

(iv) onsite or offsite improvements necessary for new development to meet the safety, level of service, and other minimum development standards that have been adopted by the governmental entity.

(6) "Proportionate share" means that portion of the cost of capital system improvements that reasonably relates to the service demands and needs of the project. A proportionate share must take into account the limitations provided in 7-6-1602.

(7) "Public facilities" means:

(a) a water supply production, treatment, storage, or distribution facility;

(b) a wastewater collection, treatment, or disposal facility;

(c) a transportation facility, including roads, streets, bridges, rights-of-way, traffic signals, and landscaping;

(d) a storm water collection, retention, detention, treatment, or disposal facility or a flood control facility;

(e) a police, emergency medical rescue, or fire protection facility; and

(f) other facilities for which documentation is prepared as provided in 7-6-1602 that have been approved as part of an impact fee ordinance or resolution by:

(i) a two-thirds majority of the governing body of an incorporated city, town, or consolidated local government; or

(ii) a unanimous vote of the board of county commissioners of a county government.

History: En. Sec. 1, Ch. 299, L. 2005.

Calculation Of Impact Fees -- Documentation Required -- Ordinance Or Resolution -- Requirements For Impact Fees

7-6-1602. Calculation of impact fees -- documentation required -- ordinance or resolution -- requirements for impact fees. (

1) For each public facility for which an impact fee is imposed, the governmental entity shall prepare and approve a service area report.

(2) The service area report is a written analysis that must:

(a) describe existing conditions of the facility;

(b) establish level-of-service standards;

(c) forecast future additional needs for service for a defined period of time;

(d) identify capital improvements necessary to meet future needs for service;

(e) identify those capital improvements needed for continued operation and maintenance of the facility;

(f) make a determination as to whether one service area or more than one service area is necessary to establish a correlation between impact fees and benefits;

(g) make a determination as to whether one service area or more than one service area for transportation facilities is needed to establish a correlation between impact fees and benefits;

(h) establish the methodology and time period over which the governmental entity will assign the proportionate share of capital costs for expansion of the facility to provide service to new development within each service area;

(i) establish the methodology that the governmental entity will use to exclude operations and maintenance costs and correction of existing deficiencies from the impact fee;

(j) establish the amount of the impact fee that will be imposed for each unit of increased service demand; and

(k) have a component of the budget of the governmental entity that:

(i) schedules construction of public facility capital improvements to serve projected growth;

(ii) projects costs of the capital improvements;

(iii) allocates collected impact fees for construction of the capital improvements; and

(iv) covers at least a 5-year period and is reviewed and updated at least every 5 years.

(3) The service area report is a written analysis that must contain documentation of sources and methodology used for purposes of subsection (2) and must document how each impact fee meets the requirements of subsection (7).

(4) The service area report that supports adoption and calculation of an impact fee must be available to the public upon request.

(5) The amount of each impact fee imposed must be based upon the actual cost of public facility expansion or improvements or reasonable estimates of the cost to be incurred by the governmental entity as a result of new development. The calculation of each impact fee must be in accordance with generally accepted accounting principles.

(6) The ordinance or resolution adopting the impact fee must include a time schedule for periodically updating the documentation required under subsection (2).

(7) An impact fee must meet the following requirements:

(a) The amount of the impact fee must be reasonably related to and reasonably attributable to the development's share of the cost of infrastructure improvements made necessary by the new development.

(b) The impact fees imposed may not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in accommodating the development. The following factors must be considered in determining a proportionate share of public facilities capital improvements costs:

(i) the need for public facilities capital improvements required to serve new development; and

(ii) consideration of payments for system improvements reasonably anticipated to be made by or as a result of the development in the form of user fees, debt service payments, taxes, and other available sources of funding the system improvements.

(c) Costs for correction of existing deficiencies in a public facility may not be included in the impact fee.

(d) New development may not be held to a higher level of service than existing users unless there is a mechanism in place for the existing users to make improvements to the existing system to match the higher level of service.

(e) Impact fees may not include expenses for operations and maintenance of the facility.

History: En. Sec. 2, Ch. 299, L. 2005; amd. Sec. 1, Ch. 358, L. 2009; amd. Sec. 1, Ch. 276, L. 2015.

Collection And Expenditure Of Impact Fees -- Refunds Or Credits -- Mechanism For Appeal Required

7-6-1603. Collection and expenditure of impact fees -- refunds or credits -- mechanism for appeal required. (1) The collection and expenditure of impact fees must comply with this part. The collection and expenditure of impact fees must be reasonably related to the benefits accruing to the development paying the impact fees. The ordinance or resolution adopted by the governmental entity must include the following requirements:

(a) Upon collection, impact fees must be deposited in a special proprietary fund, which must be invested with all interest accruing to the fund.

(b) A governmental entity may impose impact fees on behalf of local districts.

(c) If the impact fees are not collected or spent in accordance with the impact fee ordinance or resolution or in accordance with 7-6-1602, any impact fees that were collected must be refunded to the person who owned the property at the time that the refund was due.

(2) All impact fees imposed pursuant to the authority granted in this part must be paid no earlier than the date of issuance of a building permit if a building permit is required for the development or no earlier than the time of wastewater or water service connection or well or septic permitting.

(3) A governmental entity may recoup costs of excess capacity in existing capital facilities, when the excess capacity has been provided in anticipation of the needs of new development, by requiring impact fees for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been documented pursuant to 7-6-1602 in a manner that demonstrates the need for the excess capacity. This part does not prevent a governmental entity from continuing to assess an impact fee that recoups costs for excess capacity in an existing facility. The impact fees imposed to recoup the costs to provide the excess capacity must be based on the governmental entity's actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity.

(4) Governmental entities may accept the dedication of land or the construction of public facilities in lieu of payment of impact fees if:

(a) the need for the dedication or construction is clearly documented pursuant to 7-6-1602;

(b) the land proposed for dedication for the public facilities to be constructed is determined to be appropriate for the proposed use by the governmental entity;

(c) formulas or procedures for determining the worth of proposed dedications or constructions are established as part of the impact fee ordinance or resolution; and

(d) a means to establish credits against future impact fee revenue has been created as part of the adopting ordinance or resolution if the dedication of land or construction of public facilities is of worth in excess of the impact fee due from an individual development.

(5) Impact fees may not be imposed for remodeling, rehabilitation, or other improvements to an existing structure or for rebuilding a damaged structure unless there is an increase in units that increase service demand as described in 7-6-1602(2)(j). If impact fees are imposed for remodeling, rehabilitation, or other improvements to an existing structure or use, only the net increase between the old and new demand may be imposed.

(6) This part does not prevent a governmental entity from granting refunds or credits:

(a) that it considers appropriate and that are consistent with the provisions of 7-6-1602 and this chapter; or

(b) in accordance with a voluntary agreement, consistent with the provisions of 7-6-1602 and this chapter, between the governmental entity and the individual or entity being assessed the impact fees.

(7) An impact fee represents a fee for service payable by all users creating additional demand on the facility.

(8) An impact fee ordinance or resolution must include a mechanism whereby a person charged an impact fee may appeal the charge if the person believes an error has been made.

History: En. Sec. 3, Ch. 299, L. 2005; amd. Sec. 2, Ch. 358, L. 2009.

Impact Fee Advisory Committee

7-6-1604. Impact fee advisory committee.

(1) A governmental entity that intends to propose an impact fee ordinance or resolution shall establish an impact fee advisory committee.

(2) An impact fee advisory committee must include at least one representative of the development community. The committee shall review and monitor the process of calculating, assessing, and spending impact fees.

(3) The impact fee advisory committee shall serve in an advisory capacity to the governing body of the governmental entity.

History: En. Sec. 4, Ch. 299, L. 2005; amd. Sec. 2, Ch. 276, L. 2015.

Nevada Impact Fee Act

[updated July 3, 2013]

CHAPTER 278B
IMPACT FEES FOR NEW DEVELOPMENT

GENERAL PROVISIONS

NRS 278B.010 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 278B.020 to 278B.140, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1989, 839; A 2001, 844)

NRS 278B.020 "Capital improvement" defined. "Capital improvement" means a:

1. Drainage project;

2. Fire station project;

3. Park project;

4. Police station project;

5. Sanitary sewer project;

6. Storm sewer project;

7. Street project; or

8. Water project.

(Added to NRS by 1989, 839; A 2001, 844)

NRS 278B.030 "Drainage project" defined. "Drainage project" means any natural and artificial watercourses, water diversion and water storage facilities, including all appurtenances and incidentals necessary for any such facilities.

(Added to NRS by 1989, 840)

NRS 278B.040 "Facility expansion" defined. "Facility expansion" means the expansion of the capacity of an existing facility associated with a capital improvement to serve new development. The term does not include the repair, maintenance or modernization of a capital improvement or facility.

(Added to NRS by 1989, 840)

NRS 278B.045 "Fire station project" defined.

1. "Fire station project" means one or more of the following portions of a fire station or a fire substation:

(a) Office space used for the administration of the fire station or fire substation.

(b) Storage areas.

(c) Kitchen facilities.

(d) Dormitories and locker rooms.

(e) Restroom facilities.

(f) Training or exercise facilities.

(g) Briefing or conference facilities.

(h) Facilities and such appurtenances necessary for housing and maintaining vehicles and equipment used for fire fighting or to provide emergency medical services.

(i) A facility or portion of a facility that is required in order to comply with standards for occupational safety and health.

(j) Parking areas for employees and the public.

(k) Landscaping.

(l) Utilities.

2. The term does not include:

(a) A facility or portion of a facility that is used to replace services for the prevention or suppression of fire that were once provided elsewhere in the city or county.

(b) Vehicles and equipment used for fire fighting or to provide emergency medical services.

(c) A facility that is used for training firefighters from more than one fire station or fire substation.

(Added to NRS by 2001, 843; A 2007, 419)

NRS 278B.050 "Impact fee" defined. "Impact fee" means a charge imposed by a local government on new development to finance the costs of a capital improvement or facility expansion necessitated by and attributable to the new development. The term does not include a tax for the improvement of transportation imposed pursuant to NRS 278.710.

(Added to NRS by 1989, 840; A 1991, 34)

NRS 278B.060 "Land use assumptions" defined. "Land use assumptions" means projections of changes in land uses, densities, intensities and population for a specified service area over a period of at least 10 years and in accordance with the master plan of the local government.

(Added to NRS by 1989, 840)

NRS 278B.070 "Local government" defined. "Local government" means a city or a county.

(Added to NRS by 1989, 840)

NRS 278B.080 "New development" defined. "New development" means:

1. The subdivision of land;

2. The construction, reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure which adds or increases the number of service units; or

3. Any use or extension of the use of land which increases the number of service units.

(Added to NRS by 1989, 840)

NRS 278B.083 "Park project" defined. "Park project" means real property, turf, trees, irrigation, playground apparatus, playing fields, areas to be used for organized amateur sports, play areas, picnic areas, horseshoe pits, trails, jogging and pedestrian paths, tennis courts, areas designated for the use of skateboards and other recreational equipment or appurtenances which are designed to serve natural persons, families and small groups and which are used for a park that is not larger than 50 acres in area. The term does not include auditoriums, arenas, bandstand and orchestra facilities, bathhouses, clubhouses, community centers that are more than 3,000 square feet in floor area, golf course facilities, greenhouses, swimming pools, zoo facilities or similar recreational facilities.

(Added to NRS by 2001, 844)

NRS 278B.087 "Police station project" defined.

1. "Police station project" means one or more of the following portions of a police station or a police substation:

(a) Office space used for the administration of the police station or police substation.

(b) Storage areas.

(c) Locker rooms.

(d) Restroom facilities.

(e) Training or exercise facilities.

(f) Briefing or conference facilities.

(g) Parking areas for employees and the public.

(h) Landscaping.

(i) Utilities.

2. The term does not include:

(a) A facility or portion of a facility that is used to replace police services that were once provided elsewhere in the city or county.

(b) Vehicles and equipment used to provide police or administrative services.

(c) A facility that is used for training police officers from more than one police station.

(Added to NRS by 2001, 844; A 2007, 419)

NRS 278B.090 "Sanitary sewer project" defined. "Sanitary sewer project" means facilities for the collection, interception, transportation, treatment, purification and disposal of sewage, including all appurtenances and incidentals necessary for any such facilities.

(Added to NRS by 1989, 840)

NRS 278B.100 "Service area" defined. "Service area" means any specified area within the boundaries of a local government in which new development necessitates capital improvements or facility expansions and within which new development is served directly and benefited by the capital improvement or facility expansion as set forth in the capital improvements plan. The term does not include any area that makes up the entire area of a local government, unless the local government is a city whose population is less than 15,000 or a county whose population is less than 15,000.

(Added to NRS by 1989, 840; A 2007, 677; 2011, 1202)

NRS 278B.110 "Service unit" defined. "Service unit" means a standardized measure of consumption, use, generation or discharge which is attributable to an individual unit of development calculated for a particular category of capital improvements or facility expansions.

(Added to NRS by 1989, 840)

NRS 278B.120 "Storm sewer project" defined. "Storm sewer project" means facilities for the collection, interception, transportation and disposal of rainfall and other storm waters, including all appurtenances and incidentals necessary for any such facilities.

(Added to NRS by 1989, 840)

NRS 278B.130 "Street project" defined. "Street project" means the arterial or collector streets or roads which have been designated on the streets and highways plan in the master plan adopted by the local government pursuant to NRS 278.220, including all appurtenances, traffic signals and incidentals necessary for any such facilities.

(Added to NRS by 1989, 840; A 2001, 844)

NRS 278B.140 "Water project" defined. "Water project" means facilities for the collection, transportation, treatment, purification and distribution of water, including all appurtenances and incidentals necessary for any such facilities.

(Added to NRS by 1989, 840)

IMPOSITION; CAPITAL IMPROVEMENTS PLAN

NRS 278B.150 Capital improvements advisory committee: Establishment; designation of planning commission; duties.

1. Before imposing an impact fee, the governing body of the local government must establish by resolution a capital improvements advisory committee. The committee must be composed of at least five members.

2. The governing body may designate the planning commission to serve as the capital improvements advisory committee if:

(a) The planning commission includes at least one representative of the real estate, development or building industry who is not an officer or employee of the local government; or

(b) The governing body appoints a representative of the real estate, development or building industry who is not an officer or employee of the local government to serve as a voting member of the planning commission when the planning commission is meeting as the capital improvements advisory committee.

3. The capital improvements advisory committee shall:

(a) Review the land use assumptions and determine whether they are in conformance with the master plan of the local government;

(b) Review the capital improvements plan and file written comments;

(c) Every 3 years file reports concerning the progress of the local government in carrying out the capital improvements plan;

(d) Report to the governing body any perceived inequities in the implementation of the capital improvements plan or the imposition of an impact fee; and

(e) Advise the local government of the need to update or revise the land use assumptions, capital improvements plan and ordinance imposing an impact fee.

(Added to NRS by 1989, 845; A 1995, 2689)

NRS 278B.160 Imposition and purpose of impact fee; costs that may be included; property of school district exempt.

1. A local government may by ordinance impose an impact fee in a service area to pay the cost of constructing a capital improvement or facility expansion necessitated by and attributable to new development. Except as otherwise provided in NRS 278B.220, the cost may include only:

(a) The estimated cost of actual construction, including, without limitation, the cost of connecting a capital improvement or facility expansion to a line or facility used to provide water or sewer service;

(b) Estimated fees for professional services;

(c) The estimated cost to acquire the land; and

(d) The fees paid for professional services required for the preparation or revision of a capital improvements plan in anticipation of the imposition of an impact fee.

2. All property owned by a school district is exempt from the requirement of paying impact fees imposed pursuant to this chapter.

(Added to NRS by 1989, 840; A 1995, 2690; 2007, 677)

NRS 278B.170 Contents of capital improvements plan. A capital improvements plan must include, by service area:

1. A description of the existing capital improvements and the costs to upgrade, improve, expand or replace those improvements to meet existing needs or more stringent safety, environmental or regulatory standards.

2. An analysis of the total capacity, level of current usage and commitments for usage of capacity of the existing capital improvements.

3. A description of any part of the capital improvements or facility expansions and the costs necessitated by and attributable to the new development in the service area based on the approved land use assumptions.

4. A table which establishes the specific level or quantity of use, consumption, generation or discharge of a service unit for each category of capital improvements or facility expansions.

5. An equivalency or conversion table which establishes the ratio of a service unit to each type of land use, including but not limited to, residential, commercial and industrial uses.

6. The number of projected service units which are required by the new development within the service area based on the approved land use assumptions.

7. The projected demand for capital improvements or facility expansions required by new service units projected over a period not to exceed 10 years.

(Added to NRS by 1989, 841)

NRS 278B.180 Public hearing to consider land use assumptions; notice of hearing.

1. A local government which wishes to impose an impact fee must set a time at least 20 days thereafter and place for a public hearing to consider the land use assumptions within the designated service area which will be used to develop the capital improvements plan.

2. The notice must be given:

(a) By publication of a copy of the notice at least once a week for 2 weeks in a newspaper of general circulation in the jurisdiction of the local government.

(b) By posting a copy of the notice at the principal office of the local government and at least three other separate, prominent places within the jurisdiction of the local government.

3. Proof of publication must be by affidavit of the publisher.

4. Proof of posting must be by affidavit of the clerk or any deputy posting the notice.

5. The notice must contain:

(a) The time, date and location of the hearing;

(b) A statement that the purpose of the hearing is to consider the land use assumptions which will be used to develop a capital improvements plan for which an impact fee may be imposed;

(c) A map of the service area to which the land assumptions apply; and

(d) A statement that any person may appear at the hearing and present evidence for or against the land use assumptions.

(Added to NRS by 1989, 842; A 1995, 2690)

NRS 278B.190 Approval of land use assumptions; development of capital improvements plan; public hearing to consider adoption of plan and imposition of impact fee; notice of hearing.

1. The governing body of the local government shall approve or disapprove the land use assumptions within 30 days after the public hearing.

2. If the governing body approves the land use assumptions, it shall develop or cause to be developed a capital improvements plan.

3. Upon the completion of the capital improvements plan, the governing body shall set a time at least 20 days thereafter and place for a public hearing to consider the adoption of the plan and the imposition of an impact fee.

4. The notice must be given:

(a) By publication of a copy of the notice at least once a week for 2 weeks in a newspaper of general circulation in the jurisdiction of the local government.

(b) By posting a copy of the notice at the principal office of the local government and at least three other separate, prominent places within the jurisdiction of the local government.

5. Proof of publication must be by affidavit of the publisher.

6. Proof of posting must be by affidavit of the clerk or any deputy posting the notice.

7. The notice must contain:

(a) The time, date and location of the hearing;

(b) A statement that the purpose of the hearing is to consider the adoption of an impact fee;

(c) A map of the service area on which the proposed impact fee will be imposed;

(d) The amount of the proposed impact fee for each service unit; and

(e) A statement that any person may appear at the hearing and present evidence for or against the land use assumptions.

(Added to NRS by 1989, 843; A 1995, 2690)

NRS 278B.200 Receipt, consideration and waiver of complaints, protests and objections concerning impact fee.

1. On the date and at the place fixed for the hearing any person may, by written complaints, protests or objections, present his or her views concerning the proposed impact fee to the governing body, or present them orally, and the governing body may adjourn the hearing from time to time.

2. After the hearing has been concluded, after all written complaints, protests and objections have been read and considered, and after all persons wishing to be heard in person have been heard, the governing body shall consider the arguments, if any, and any other relevant material put forth, and shall by resolution or ordinance, pass upon the merits of each such complaint, protest or objection.

3. Any complaint, protest or objection to the regularity, validity and correctness of the proceedings and instruments taken, adopted or made before the date of the hearing shall be deemed waived unless presented in writing at the time and in the manner set forth in this section.

(Added to NRS by 1989, 843)

NRS 278B.210 Adoption of capital improvements plan and imposition of impact fee; accounting.

1. The governing body of the local government shall approve or disapprove the adoption of the capital improvements plan and the imposition of an impact fee within 30 days after the public hearing.

2. If the governing body approves the plan and the imposition of the impact fee, it shall adopt an ordinance providing that all the impact fees collected must be deposited in an interest-bearing account which clearly identifies the category of capital improvements or facility expansions within the service area for which the fee was imposed.

3. The records of the account into which the impact fees were deposited must be available for public inspection during ordinary business hours.

4. The interest and income earned on money in the account must be credited to the account.

(Added to NRS by 1989, 844)

AMOUNT, COLLECTION AND USE OF FEES

NRS 278B.220 Inclusion of costs of financing in amount of impact fee. Projected interest charges and other finance costs may be included in calculating the amount of impact fees if the money is used for the payment of principal and interest on the portion of the bonds, notes or other obligations issued by or on behalf of the local government to finance the capital improvements or facility expansions identified in the capital improvements plan as being necessitated by and attributable to new development.

(Added to NRS by 1989, 841)

NRS 278B.225 Impact fee to pay cost of street project: Ordinance to cumulatively increase fee on automatic basis to adjust for inflation; time at which such increases become effective.

1. The governing body of a local government which imposes an impact fee to pay the cost of constructing a street project may include a provision in the ordinance imposing the impact fee or adopt a separate ordinance providing that each year in which the governing body does not adopt any revisions to the land use assumptions or capital improvements plan or otherwise increase the impact fee, the current amount of the impact fee is cumulatively increased:

(a) By a percentage equal to the average percentage of increase in the Consumer Price Index for West Urban Consumers for the preceding 5 years; or

(b) By 4.5 percent,

Ê whichever is less.

2. Upon inclusion of a provision in the ordinance imposing the impact fee or the adoption of a separate ordinance authorized by subsection 1, no further action by the governing body is necessary to effectuate the annual increases.

3. Each increase authorized pursuant to this section becomes effective 1 year after:

(a) The date upon which the impact fee initially becomes effective;

(b) The date the governing body adopts a revised capital improvements plan; or

(c) The effective date of any previous increase in the impact fee pursuant to this section, whichever occurs last.

(Added to NRS by 2003, 958)

NRS 278B.230 Maximum impact fee per service unit; time for collection.

1. The impact fee per service unit, excluding the amount of any increase authorized pursuant to NRS 278B.225, must not exceed the amount determined by dividing the costs of the capital improvements described in subsection 3 of NRS 278B.170 by the total number of projected service units described in subsection 6 of NRS 278B.170.

2. If the number of new service units projected over a period is less than the total number of new service units shown by the approved land use assumptions at full development of the service area, the maximum impact fee which may be charged per service unit, excluding the amount of any increase authorized pursuant to NRS 278B.225, must be calculated by dividing the costs of the part of the capital improvements required by the new service units described in subsection 7 of NRS 278B.170 by the projected new service units described in that subsection.

3. The impact fee may be collected at the same time as the fee for issuance of a building permit for the service unit or at the time a certificate of occupancy is issued for the service unit, as specified in the ordinance.

(Added to NRS by 1989, 842; A 2003, 959)

NRS 278B.240 Credits against impact fees; reimbursement of school district for certain costs.

1. If an owner is required by a local government, as a condition of the approval of the development, to construct or dedicate, or both, a portion of the off-site facilities for which impact fees other than for a park project are imposed, the off-site facilities must be credited against those impact fees.

2. If a school district is required by a local government to construct or dedicate, or both, a portion of the off-site facilities for which impact fees are imposed, the local government shall, upon the request of the school district, reimburse or enter into an agreement to reimburse the school district for the cost of the off-site facilities constructed or dedicated, or both, minus the cost of the off-site facilities immediately adjacent to or providing connection to the school development which would be required by local ordinance in the absence of an ordinance authorizing impact fees.

3. If an owner is required by a local government to:

(a) Pay a residential construction tax pursuant to NRS 278.4983;

(b) Dedicate land pursuant to NRS 278.4979 or otherwise dedicate or improve land, or both, for use as a park; or

(c) Construct or dedicate a portion of the off-site facilities for which impact fees for a park project are imposed,

Ê the owner is entitled to a credit against the impact fee imposed for the park project for the amount of the residential construction tax paid, the fair market value of the land dedicated, the cost of any improvements to the dedicated land or the cost of the off-site facilities dedicated or constructed, as applicable.

(Added to NRS by 1989, 842; A 1995, 2691; 2001, 844)

NRS 278B.250 Conditions upon collection of impact fee. An impact fee must not be collected unless:

1. Collection is made to pay for a capital improvement or facility expansion which has been identified in the capital improvements plan;

2. The local government agrees to reserve capacity to serve future development and the owner and the local government enter into a written agreement to do so; or

3. The local government agrees that the owner of a new development may construct or finance the capital improvements or facility expansions and:

(a) The costs incurred or money advanced will be credited against the impact fees otherwise due from the new development; or

(b) It will reimburse the owner for those costs from the impact fees paid from other developments which will use those capital improvements or facility expansions.

(Added to NRS by 1989, 842)

NRS 278B.260 Refund of impact fee.

1. The local government shall, upon the request of an owner of real property for which an impact fee has been collected, refund the impact fee and any interest and income earned on the impact fee by the local government, if:

(a) After collecting the fee the local government did not begin construction of the capital improvement or facility expansion for which the fee was collected within 5 years after collecting the fee; or

(b) The fee, or any portion thereof, was not spent for the purpose for which it was collected within 10 years after the date on which it was collected.

2. The local government shall, upon the completion of the capital improvement or facility expansion identified in the capital improvements plan or upon expenditure of fees collected from a development, recalculate the impact fee for that development by using the actual costs of the capital improvement or facility expansion or the actual costs of those capital improvements or facility expansions completed and engineering estimates of those capital improvements or facility expansions to be completed within the service area.

3. If the impact fee based on the cost or recalculated cost is less than the impact fee paid, the local government shall refund:

(a) The difference if the actual costs are known; or

(b) The difference if it exceeds the impact fee paid by more than 10 percent, if estimates are used,

Ê and any interest and income earned by the local government on the amount of money refunded.

4. The local government shall refund any impact fee or part thereof, and any interest and income earned by the local government on the amount of money refunded, if it is not spent within 10 years after the date of payment.

5. Each refund must be paid to the owner of the property on record at the time the refund is paid. If a local government paid the impact fee, the refund must be paid to that local government.

6. Any limitation of time established by this section is suspended for any period, not to exceed 1 year, during which this State or the Federal Government takes any action to protect the environment or an endangered species which prohibits, stops or delays the construction of the capital improvement or facility expansion for which an impact fee was collected.

(Added to NRS by 1989, 844; A 1991, 298)

NRS 278B.270 Collection of additional impact fees. After the collection of the impact fee no additional impact fees may be collected for the same service unit. If the number of service units increases, the impact fee must be limited to the amount which is attributable to the additional service units.

(Added to NRS by 1989, 842)

NRS 278B.280 Prohibited uses of impact fees. Impact fees must not be used for:

1. The construction, acquisition or expansion of public facilities or assets other than capital improvements or facility expansions which are included in the capital improvements plan.

2. The repair, operation or maintenance of existing or new capital improvements or facility expansions.

3. The upgrading, expansion or replacement of existing capital improvements or facilities to serve existing development to meet more stringent safety, environmental or regulatory standards.

4. The upgrading, expansion or replacement of existing capital improvements or facilities to provide better service to existing development.

5. The administrative and operating costs of the local government.

6. Except as otherwise provided in NRS 278B.220, the payments of principal and interest or other finance charges on bonds or other indebtedness.

(Added to NRS by 1989, 841)

REVIEW AND REVISION OF CAPITAL IMPROVEMENTS PLAN

NRS 278B.290 Periodic review of capital improvements plan; public hearing to discuss revision; notice of hearing.

1. Each local government which imposes an impact fee shall review and may revise the land use assumptions and capital improvements plan at least once every 3 years. The 3-year period begins upon the adoption of the capital improvements plan by the local government.

2. Upon the completion of the revised capital improvements plan, the local government shall set a time at least 20 days thereafter and place for a public hearing to discuss and review the revision of the plan and whether the revised plan should be adopted.

3. The notice must be given:

(a) By publication of a copy of the notice at least once a week for 2 weeks in a newspaper of general circulation in the jurisdiction of the local government.

(b) By posting a copy of the notice at the principal office of the local government and at least three other separate, prominent places within the jurisdiction of the local government.

4. Proof of publication must be by affidavit of the publisher.

5. Proof of posting must be by affidavit of the clerk or any deputy posting the notice.

6. The notice must contain:

(a) The time, date and location of the hearing;

(b) A statement that the purpose of the hearing is to consider the revision of the land use assumptions, capital improvements plan and the imposition of an impact fee;

(c) A map of the service area for which the revision is being prepared; and

(d) A statement that any person may appear at the hearing and present evidence for or against the revision.

(Added to NRS by 1989, 845; A 1995, 2691)

NRS 278B.300 Adoption of revised capital improvements plan. The governing body of the local government shall approve or disapprove the adoption of the revised capital improvements plan, the land use assumptions and the imposition of an impact fee within 30 days after the public hearing.

(Added to NRS by 1989, 845)

MISCELLANEOUS PROVISIONS

NRS 278B.310 Development entitled to services and use of facilities upon payment of impact fee. Any new development for which an impact fee has been paid is entitled to:

1. The permanent use and benefit of the facilities for which the fee was imposed; and

2. Receive immediate service from any existing facility with actual capacity to serve the new service units.

(Added to NRS by 1989, 842)

NRS 278B.320 Seller of property to provide buyer with notice of impact fee; contents of notice; liability of seller.

1. The seller of any property who has actual or constructive notice of the imposition or pending imposition of an impact fee on that property which has not been paid in full shall give written notice of the fee to the buyer before the property is conveyed.

2. The notice must contain:

(a) The amount of the impact fee which has not yet been paid, if it has been imposed at the time the notice is given; and

(b) The name of the local government which imposed or will impose the impact fee.

3. If the seller fails to give the notice required pursuant to this section, the seller is liable to the buyer for any amount of the impact fee which becomes payable on the property after the conveyance.

(Added to NRS by 1989, 845)

NRS 278B.330 Limitation on time for judicial review of final action, decision or order. No action or proceeding may be commenced for the purpose of seeking judicial relief or review from or with respect to any final action, decision or order of any committee or other governing body authorized by this chapter unless the action or proceeding is commenced within 25 days after the date of filing of notice of the final action, decision or order with the clerk or secretary of the committee or governing body.

(Added to NRS by 1991, 49)

RESIDENTIAL CONSTRUCTION TAX FOR PARKS

NRS 278.4983 Residential construction tax.

1. The city council of any city or the board of county commissioners of any county which has adopted a master plan and recreation plan, as provided in this chapter, which includes, as a part of the plan, future or present sites for neighborhood parks may, by ordinance, impose a residential construction tax pursuant to this section.

2. If imposed, the residential construction tax must be imposed on the privilege of constructing apartment houses and residential dwelling units and developing mobile home lots in the respective cities and counties. The rate of the tax must not exceed:

(a) With respect to the construction of apartment houses and residential dwelling units, 1 percent of the valuation of each building permit issued or $1,000 per residential dwelling unit, whichever is less. For the purpose of the residential construction tax, the city council of the city or the board of county commissioners of the county shall adopt an ordinance basing the valuation of building permits on the actual costs of residential construction in the area.

(b) With respect to the development of mobile home lots, for each mobile home lot authorized by a lot development permit, 80 percent of the average residential construction tax paid per residential dwelling unit in the respective city or county during the calendar year next preceding the fiscal year in which the lot development permit is issued.

3. The purpose of the tax is to raise revenue to enable the cities and counties to provide neighborhood parks and facilities for parks which are required by the residents of those apartment houses, mobile homes and residences.

4. An ordinance enacted pursuant to subsection 1 must establish the procedures for collecting the tax, set its rate, and determine the purposes for which the tax is to be used, subject to the restrictions and standards provided in this chapter. The ordinance must, without limiting the general powers conferred in this chapter, also include:

(a) Provisions for the creation, in accordance with the applicable master plan, of park districts which would serve neighborhoods within the city or county.

(b) A provision for collecting the tax at the time of issuance of a building permit for the construction of any apartment houses or residential dwelling units, or a lot development permit for the development of mobile home lots.

5. All residential construction taxes collected pursuant to the provisions of this section and any ordinance enacted by a city council or board of county commissioners, and all interest accrued on the money, must be placed with the city treasurer or county treasurer in a special fund. Except as otherwise provided in subsection 6, the money in the fund may only be used for the acquisition, improvement and expansion of

neighborhood parks or the installation of facilities in existing or neighborhood parks in the city or county. Money in the fund must be expended for the benefit of the neighborhood from which it was collected.

6. If a neighborhood park has not been developed or facilities have not been installed in an existing park in the park district created to serve the neighborhood in which the subdivision or development is located within 3 years after the date on which 75 percent of the residential dwelling units authorized within that subdivision or development first became occupied, all money paid by the subdivider or developer, together with interest at the rate at which the city or county has invested the money in the fund, must be refunded to the owners of the lots in the subdivision or development at the time of the reversion on a pro rata basis.

7. The limitation of time established pursuant to subsection 6 is suspended for any period, not to exceed 1 year, during which this State or the Federal Government takes any action to protect the environment or an endangered species which prohibits, stops or delays the development of a park or installation of facilities.

8. For the purposes of this section:

(a) "Facilities" means turf, trees, irrigation, playground apparatus, playing fields, areas to be used for organized amateur sports, play areas, picnic areas, horseshoe pits and other recreational equipment or appurtenances designed to serve the natural persons, families and small groups from the neighborhood from which the tax was collected.

(b) "Neighborhood park" means a site not exceeding 25 acres, designed to serve the recreational and outdoor needs of natural persons, families and small groups.

(Added to NRS by 1973, 1449; A 1983, 1551; 1987, 1611; 1991, 299; 1999, 807, 1689)

RESIDENTIAL CONSTRUCTION TAX FOR SCHOOLS

NRS 387.331 Imposition of tax in school district whose population is less than 50,000; limitation on amount; deposit of proceeds.

1. The tax on residential construction authorized by this section is a specified amount which must be the same for each:

(a) Lot for a mobile home;

(b) Residential dwelling unit; and

(c) Suite in an apartment house,

imposed on the privilege of constructing apartment houses and residential dwelling units and developing lots for mobile homes.

2. The board of trustees of any school district whose population is less than 50,000 may request that the board of county commissioners of the county in which the school district is located impose a tax on residential construction in the school district to construct, remodel and make additions to school buildings. Whenever the board of trustees takes that action, it shall notify the board of county commissioners and shall specify the areas of the county to be served by the buildings to be erected or enlarged.

3. If the board of county commissioners decides that the tax should be imposed, it shall notify the Nevada Tax Commission. If the Commission approves, the board of county commissioners may then impose the tax, whose specified amount must not exceed $1,600.

4. The board shall collect the tax so imposed, in the areas of the county to which it applies, and may require that administrative costs, not to exceed 1 percent, be paid from the amount collected.

5. The money collected must be deposited with the county treasurer in the school district's fund for capital projects to be held and expended in the same manner as other money deposited in that fund.

(Added to NRS by 1979, 1287; A 1983, 1635; 1989, 1924; 1997, 2358; 2001, 1987)

NRS 387.332 Duty of Nevada Tax Commission to review need for tax. The Nevada Tax Commission shall, every 4 years after it has approved the imposition of a tax on residential construction in a particular county or area of a county, review the need for the tax under the circumstances existing at the time of the review. If the Commission finds that the tax is no longer needed, it shall so inform the board of county commissioners of that county, who shall repeal the tax as of the end of the current fiscal year.

(Added to NRS by 1979, 1288)

TRANSPORTATION DEVELOPMENT TAX

NRS 278.710 Imposition of tax on privilege of development; special election; rate of tax; collection of tax; use of revenue; applicability of chapter 278B of NRS.

1. A board of county commissioners may by ordinance, but not as in a case of emergency, impose a tax for the improvement of transportation on the privilege of new residential, commercial, industrial and other development pursuant to paragraph (a) or (b) as follows:

> (a) After receiving the approval of a majority of the registered voters of the county voting on the question at a special election or the next primary or general election, the board of county commissioners may impose the tax throughout the county, including any such development in incorporated cities in the county. A county may combine this question with a question submitted pursuant to NRS 244.3351, 371.045 or 377A.020, or any combination thereof.
>
> (b) After receiving the approval of a majority of the registered voters who reside within the boundaries of a transportation district created pursuant to NRS 244A.252, voting on the question at a special or general district election or primary or general state election, the board of county commissioners may impose the tax within the boundaries of the district. A county may combine this question with a question submitted pursuant to NRS 244.3351.

2. A special election may be held only if the board of county commissioners determines, by a unanimous vote, that an emergency exists. The determination made by the board of county commissioners is conclusive unless it is shown that the board acted with fraud or a gross abuse of discretion. An action to challenge the determination made by the board must be commenced within 15 days after the board's determination is final. As used in this subsection, "emergency" means any unexpected occurrence or combination of occurrences which requires immediate action by the board of county commissioners to prevent or mitigate a substantial financial loss to the county or to enable the board of county commissioners to provide an essential service to the residents of the county.

3. The tax imposed pursuant to this section must be at such a rate and based on such criteria and classifications as the board of county commissioners determines to be appropriate. Each such determination

is conclusive unless it constitutes an arbitrary and capricious abuse of discretion, but the tax imposed must not:

(a) For any fiscal year beginning:

(1) Before July 1, 2003, exceed $500;

(2) On or after July 1, 2003, and before July 1, 2005, exceed $650;

(3) On or after July 1, 2005, and before July 1, 2010, exceed $700;

(4) On or after July 1, 2010, and before July 1, 2015, exceed $800;

(5) On or after July 1, 2015, and before July 1, 2020, exceed $900; or

(6) On or after July 1, 2020, exceed $1,000,

per single-family dwelling unit of new residential development, or the equivalent thereof as determined by the board of county commissioners; or

(b) For any fiscal year beginning:

(1) Before July 1, 2003, $0.50;

(2) On or after July 1, 2003, and before July 1, 2005, exceed $0.65;

(3) On or after July 1, 2005, and before July 1, 2010, exceed $0.75;

(4) On or after July 1, 2010, and before July 1, 2015, exceed $0.80;

(5) On or after July 1, 2015, and before July 1, 2020, exceed $0.90; or

(6) On or after July 1, 2020, exceed $1.00,

per square foot on other new development.

4. If so provided in an ordinance adopted pursuant to this section, a newly developed lot for a mobile home must be considered a single-family dwelling unit of new residential development.

5. The tax imposed pursuant to this section must be collected before the time a certificate of occupancy for a building or other structure constituting new development is issued, or at such other time as is specified in the ordinance imposing the tax. If so provided in the ordinance, no certificate of occupancy may be issued by any local government unless proof of payment of the tax is filed with the person authorized to issue the certificate of occupancy. Collection of the tax imposed pursuant to this section must not commence earlier than the first day of the second calendar month after adoption of the ordinance imposing the tax.

6. In a county in which a tax has been imposed pursuant to paragraph (a) of subsection 1, the revenue derived from the tax must be used exclusively to pay the cost of:

(a) Projects related to the construction and maintenance of sidewalks, streets, avenues, boulevards, highways and other public rights-of-way used primarily for vehicular traffic, including, without limitation, overpass projects, street projects and underpass projects, as defined in NRS 244A.037, 244A.053 and 244A.055, respectively:

(1) Within the boundaries of the county;

(2) Within 1 mile outside the boundaries of the county if the board of county commissioners finds that such projects outside the boundaries of the county will facilitate transportation within the county; or

(3) Within 30 miles outside the boundaries of the county and the boundaries of this State, where those boundaries are coterminous, if:

(I) The projects consist of improvements to a highway which is located wholly or partially outside the boundaries of this State and which connects this State to an interstate highway; and

(II) The board of county commissioners finds that such projects will provide a significant economic benefit to the county;

(b) The principal and interest on notes, bonds or other obligations incurred to fund projects described in paragraph (a); or

(c) Any combination of those uses.

7. In a transportation district in which a tax has been imposed pursuant to paragraph (b) of subsection 1, the revenue derived from the tax must be used exclusively to pay the cost of:

(a) Projects related to the construction and maintenance of sidewalks, streets, avenues, boulevards, highways and other public rights-of-way used primarily for vehicular traffic, including, without limitation, overpass projects, street projects and underpass projects, as defined in NRS 244A.037, 244A.053 and 244A.055, respectively, within the boundaries of the district or within such a distance outside those boundaries as is stated in the ordinance imposing the tax, if the board of county commissioners finds that such projects outside the boundaries of the district will facilitate transportation within the district;

(b) The principal and interest on notes, bonds or other obligations incurred to fund projects described in paragraph (a); or

(c) Any combination of those uses.

8. The county may expend the proceeds of the tax authorized by this section, or any borrowing in anticipation of the tax, pursuant to an interlocal agreement between the county and the regional transportation commission of the county with respect to the projects to be financed with the proceeds of the tax.

9. The provisions of chapter 278B of NRS and any action taken pursuant to that chapter do not limit or in any other way apply to any tax imposed pursuant to this section.

(Added to NRS by 1991, 33; A 1993, 1046, 2780, 2822; 1999, 1671; 2001, 1666; 2003, 956)

New Hampshire Impact Fee Act

[downloaded April 24, 2009]

TITLE 64: Planning And Zoning
CHAPTER 674: Local Land Use Planning And Regulatory Powers: Zoning

674:21 Innovative Land Use Controls.

I. Innovative land use controls may include, but are not limited to:

(a) Timing incentives.
(b) Phased development.
(c) Intensity and use incentive.
(d) Transfer of density and development rights.
(e) Planned unit development.
(f) Cluster development.
(g) Impact zoning.
(h) Performance standards.
(i) Flexible and discretionary zoning.
(j) Environmental characteristics zoning.
(k) Inclusionary zoning.
(l) Accessory dwelling unit standards.
(m) Impact fees.
(n) Village plan alternative subdivision.

II. An innovative land use control adopted under RSA 674:16 may be required when supported by the master plan and shall contain within it the standards which shall guide the person or board which administers the ordinance. An innovative land use control ordinance may provide for administration, including the granting of conditional or special use permits, by the planning board, board of selectmen, zoning board of adjustment, or such other person or board as the ordinance may designate. If the administration of the innovative provisions of the ordinance is not vested in the planning board, any proposal submitted under this section shall be reviewed by the planning board prior to final consideration by the administrator. In such a case, the planning board shall set forth its comments on the proposal in writing and the administrator shall, to the extent that the planning board's comments are not directly incorporated into its decision, set forth its findings and decisions on the planning board's comments.

III. Innovative land use controls must be adopted in accordance with RSA 675:1, II.

IV. As used in this section:

(a) ""Inclusionary zoning" means land use control regulations which provide a voluntary incentive or benefit to a property owner in order to induce the property owner to produce housing units which are affordable to persons or families of low and moderate income. Inclusionary zoning includes, but is not limited to, density bonuses, growth control exemptions, and a streamlined application process.

(b) ""Accessory dwelling unit" means a second dwelling unit, attached or detached, which is permitted by a land use control regulation to be located on the same lot, plat, site, or other division of land as the permitted principal dwelling unit.

V. 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 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. No later than July 1, 1993, all impact fee ordinances shall be subject to the following:

(a) The amount of any such fee shall be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee. Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.

(b) In order for a municipality to adopt an impact fee ordinance, it must have enacted a capital improvements program pursuant to RSA 674:5-7.

(c) Any impact fee shall be accounted for separately, shall be segregated from the municipality's general fund, may be spent upon order of the municipal governing body, shall be exempt from all provisions of RSA 32 relative to limitation and expenditure of town moneys, and shall be used solely for the capital improvements for which it was collected, or to recoup the cost of capital improvements made in anticipation of the needs which the fee was collected to meet.

(d) All impact fees imposed pursuant to this section shall be assessed at the time of planning board approval of a subdivision plat or site plan. When no planning board approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with development. Impact fees shall be intended to reflect the effect of development upon municipal facilities at the time of the issuance of the building permit. Impact fees shall be collected at the time a certificate of occupancy is issued. If no certificate of occupancy is required, impact fees shall be collected when the development is ready for its intended use. Nothing in this subparagraph shall prevent the municipality and the assessed party from establishing an alternate, mutually acceptable schedule of payment of impact fees in effect at the time of subdivision plat or site plan approval by the planning board. If an alternate schedule of payment is established, municipalities may require developers to post bonds, issue letters of credit, accept liens, or otherwise provide suitable measures of security so as to guarantee future payment of the assessed impact fees.

(e) The ordinance shall establish reasonable times after which any portion of an impact fee which has not become encumbered or otherwise legally bound to be spent for the purpose for which it was collected shall be refunded, with any accrued interest. Whenever the calculation of an impact fee has been predicated upon some portion of capital improvement costs being borne by the municipality, a refund shall be made upon the failure of the legislative body to appropriate the municipality's share of the capital improvement costs within a reasonable time. The maximum time which shall be considered reasonable hereunder shall be 6 years.

(f) Unless otherwise specified in the ordinance, any decision under an impact fee ordinance may be appealed in the same manner provided by statute for appeals from the officer or board making that decision, as set forth in RSA 676:5, RSA 677:2-14, or RSA 677:15, respectively.

(g) The ordinance may also provide for a waiver process, including the criteria for the granting of such a waiver.

(h) The adoption of a growth management limitation or moratorium by a municipality shall not affect any development with respect to which an impact fee has been paid or assessed as part of the approval for that development.

(i) Neither the adoption of an impact fee ordinance, nor the failure to adopt such an ordinance, shall be deemed to affect existing authority of a planning board over subdivision or site plan review, except to the extent expressly stated in such an ordinance.

(j) The failure to adopt an impact fee ordinance shall not preclude a municipality from requiring developers to pay an exaction for the cost of off-site improvement needs determined by the planning board to be necessary for the occupancy of any portion of a development. For the purposes of this subparagraph, ""off-site improvements" means those improvements that are necessitated by a development but which are located outside the boundaries of the property that is subject to a subdivision plat or site plan approval by the planning board. Such off-site improvements shall be limited to any necessary highway, drainage, and sewer and water upgrades pertinent to that development. The amount of any such exaction shall be a proportional share of municipal improvement costs not previously assessed against other developments, which is necessitated by the development, and which is reasonably related to the benefits accruing to the development from the improvements financed by the exaction. As an alternative to paying an exaction, the developer may elect to construct the necessary improvements, subject to bonding and timing conditions as may be reasonably required by the planning board. Any exaction imposed pursuant to this section shall be assessed at the time of planning board approval of the development necessitating an off-site improvement. Whenever the calculation of an exaction for an off-site improvement has been predicated upon some portion of the cost of that improvement being borne by the municipality, a refund of any collected exaction shall be made to the payor or payor's successor in interest upon the failure of the local legislative body to appropriate the municipality's share of that cost within 6 years from the date of collection. For the purposes of this subparagraph, failure of local legislative body to appropriate such funding or to construct any necessary off-site improvement shall not operate to prohibit an otherwise approved development.

VI. (a) In this section, ""village plan alternative" means an optional land use control and subdivision regulation to provide a means of promoting a more efficient and cost effective method of land development. The village plan alternative's purpose is to encourage the preservation of open space wherever possible. The village plan alternative subdivision is meant to encourage beneficial consolidation of land development to permit the efficient layout of less costly to maintain roads, utilities, and other public and private infrastructures; to improve the ability of political subdivisions to provide more rapid and efficient delivery of public safety and school transportation services as community growth occurs; and finally, to provide owners of private property with a method for realizing the inherent development value of their real property in a manner conducive to the creation of substantial benefit to the environment and to the political subdivision's property tax base.

(b) An owner of record wishing to utilize the village plan alternative in the subdivision and development of a parcel of land, by locating the entire density permitted by the existing land use regulations of the political subdivision within which the property is located, on 20 percent or less of the entire parcel available for development, shall grant to the municipality within which the property is located, as a condition of approval, a recorded easement reserving the remaining land area of the entire, original lot, solely for agriculture, forestry, and conservation, or for public recreation. The recorded easement shall limit any new construction on the remainder lot to structures associated with farming operations, forest management operations, and conservation uses, and shall specify that the restrictions contained in the easement are enforceable by the municipality. Public recreational uses shall be subject to the written approval of those abutters whose property lies within the village plan alternative subdivision portion of the project at the time when such a public use is proposed.

(c) The submission and approval procedure for a village plan alternative subdivision shall be the same as that for a conventional subdivision. Existing zoning and subdivision regulations relating to emergency access, fire prevention, and public health and safety concerns including any setback requirement for wells, septic systems, or wetland requirement imposed by the department of environmental services shall apply to the developed portion of a village plan alternative subdivision, but lot size regulations and dimensional

requirements having to do with frontage and setbacks measured from all new property lot lines, and lot size regulations, as well as density regulations, shall not apply.

(1) The total density of development within a village plan alternate subdivision shall not exceed the total potential development density permitted a conventional subdivision of the entire original lot unless provisions contained within the political subdivision's land use regulations provide a basis for increasing the permitted density of development within a village plan alternative subdivision.

(2) In no case shall a political subdivision impose lesser density requirements upon a village plan alternative subdivision than the density requirements imposed on a conventional subdivision.

(d) If the total area of a proposed village plan alternative subdivision including all roadways and improvements does not exceed 20 percent of the total land area of the undeveloped lot, and if the proposed subdivision incorporates the total sum of all proposed development as permitted by local regulation on the undeveloped lot, all existing and future dimensional requirements imposed by local regulation, including lot size, shall not apply to the proposed village plan alternative subdivision.

(e) The approving authority may increase, at existing property lines, the setback to new construction within a village plan alternative subdivision by up to 2 times the distance required by current zoning or subdivision regulations, subject to the provisions of subparagraph (c).

(f) Within a village plan alternative subdivision, the exterior wall construction of buildings shall meet or exceed the requirements for fire-rated construction described by the fire prevention and building codes being enforced by the state of New Hampshire at the date and time the property owner of record files a formal application for subdivision approval with the political subdivision having jurisdiction of the project. Exterior walls and openings of new buildings shall also conform to fire protective provisions of all other building codes in force in the political subdivision. Wherever building code or fire prevention code requirements for exterior wall construction appear to be in conflict, the more stringent building or fire prevention code requirements shall apply.

Source. 1983, 447:1. 1988, 149:1, 2. 1991, 283:1, 2. 1992, 42:1. 1994, 278:1. 2002, 236:1, 2. 2004, 71:1, 2; 199:2, 3. 2005, 61:1, 2, eff. July 22, 2005. 2008, 63:1, eff. July 20, 2008.

New Jersey Transportation Development District Act

[downloaded February 11, 2005]

New Jersey Permanent Statutes

27:1C-1. Short title

This act shall be known and may be cited as the "New Jersey Transportation Development District Act of 1989."

L.1989, c.100, s.1.

27:1C-2. Findings, declarations

The Legislature finds and declares that:

a. In recent years, New Jersey has experienced explosive growth in certain regions, often along State highway routes and in urban areas experiencing rapid redevelopment. These "growth corridors" and "growth districts" are vital to the State's future but also present special problems and needs since they do not necessarily reflect municipal and county boundaries.

b. Growth corridors and districts are heavily dependent on the State's transportation system for their current and future development. At the same time, they place enormous burdens on existing transportation infrastructure contiguous to new development and elsewhere, creating demands for expensive improvements, reducing the ability of State highways to provide for through movement of traffic and creating constraints on future development.

c. Existing financial resources and existing mechanisms for securing financial commitments for transportation improvements are inadequate to meet transportation improvement needs which are the result of rapid development in growth areas, and therefore it is appropriate for the State to make special provisions for the financing of needed transportation improvements in these areas, including the creation of special financing districts and the assessment of special fees on those developments which are responsible for the added burdens on the transportation system. Creation of these special financing districts provides a mechanism in which the State, counties and municipalities will have the means to work together to respond to transportation needs on a regional basis as determined by growth conditions rather than upon the pre-existing municipal and county boundaries. The district becomes the framework for a public-private partnership in meeting the transportation needs of New Jersey. Counties are to be the lead agencies in creating these multi-jurisdictional districts, recognizing that in some instances, given growth patterns of a region, that areas from more than one county may be included within a district. Should a county fail to participate in the creation of a needed district, the State or municipality can initiate the creation of a district.

d. Any of these assessments of special fees should be assessed under a statutory plan which recognizes that: (1) the fees supplement, but do not replace, the public investment needed in the transportation system, (2) the costs of remedying existing problems cannot be charged to a new development, (3) the fee charged to any particular development must be reasonably related, within the context of a practicable scheme for assessing fees within a district, to the added burden attributable to that development, and (4) the maximum amount of fees charged to any development by the State or county or municipality for off-site transportation improvements pursuant to this act or any other law shall not exceed the property owner's fair share of such improvement costs. In determining the reasonableness of a fee assessed in accordance with the provisions of this act, it must be recognized that government must have the flexibility necessary to deal realistically with questions not susceptible of exact measurement. It is furthermore necessary to recognize that precise mathematical exactitude in the establishment of fees is neither feasible nor constitutionally vital.

e. The development of special financial mechanisms to meet the needs of growth corridors and districts should be accompanied by the development of strategies to improve regional, comprehensive planning in these areas, to encourage transportation-efficient land uses, to reduce automobile dependency, and to encourage alternatives to peak-hour automobile trips.

L.1989, c.100, s.2.

27:1C-3. Definitions

The following words or terms as used in this act shall have the following meaning unless a different meaning clearly appears from the context:

a. "Commissioner" means the Commissioner of Transportation.

b. "County" means a duly constituted county government or an appropriate governmental organization designated under paragraph (1) of subsection c. of section 4 of this act.

c. "Department" means the Department of Transportation.

d. "Development" means "development" in the meaning of section 3.1 of the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-4).

e. "Development assessment liability date" means, with respect to any transportation development district created under this act, the date upon which the commissioner adopts an order designating the district and delineating its boundaries, which order shall be published in the New Jersey Register.

f. "Development fee" means a fee assessed on a development pursuant to an ordinance or resolution, as appropriate, adopted under section 7 of this act.

g. "Public highways" means public roads, streets, expressways, freeways, parkways, motorways and boulevards, including bridges, tunnels, overpasses, underpasses, interchanges, rest areas, express bus roadways, bus pullouts and turnarounds, park-ride facilities, traffic circles, grade separations, traffic control devices, the elimination or improvement of crossings of railroads and highways, whether at grade or not at grade, and any facilities, equipment, property, rights-of-way, easements and interests therein needed for the construction, improvement and maintenance of highways.

h. "Public transportation project" means, in connection with public transportation service or regional ridesharing programs, passenger stations, shelters and terminals, automobile parking facilities, ramps, track connections, signal systems, power systems, information and communication systems, roadbeds, transit lanes or rights-of-way, equipment storage and servicing facilities, bridges, grade crossings, rail cars, locomotives, motorbus and other motor vehicles, maintenance and garage facilities, revenue handling equipment and any other equipment, facility or property useful for or related to the provision of public transportation service or regional ridesharing programs.

i. "Transportation development district" or "district" means a district created under section 4 or section 13 of this act.

j. "Transportation project" means, in addition to public highways and public transportation projects, any equipment, facility or property useful or related to the provision of any ground, waterborne or air transportation for the movement of people and goods.

L.1989, c.100, s.3.

27:1C-4. Designation, delineation of transportation development district

a. The governing body of any county may, by ordinance or resolution, as appropriate, apply to the commissioner for the designation and delineation of a transportation development district within the boundaries of the county. The application shall include: (1) proposed boundaries for the district, (2) evidence of growth conditions prevailing in the proposed district which justify creation of a transportation development district in conformity with the purposes of this act and the standards established by the commissioner, (3) a description of transportation needs arising from rapid development within the district, (4) certification that there is in effect for the county a current county master plan adopted under R.S.40:27-2 and that creation of the district would be in conformity both with the county master plan and with the State Development and Redevelopment Plan adopted under the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.), (5) certification that municipalities included, wholly or partly in the district, or which would be directly affected by the delineation or designation thereof, have been given at least 30 days' advance notice of the application and an opportunity to comment thereon, (6) comments offered by any of these municipalities, and the response thereto by the county, and (7) any additional information that the commissioner may require.

b. The commissioner shall, within 60 days of receipt of a completed application and upon review of the application as to sufficiency and conformity with the purposes of this act, (1) by order designate a district and delineate its boundaries in conformance with the application, or (2) disapprove the application and inform the governing body of the county in writing of the reasons for the disapproval, or (3) where the commissioner finds that the creation of a district is critically important and that the application of the county is sufficient in every respect except the appropriateness of the proposed boundaries for the district, by order designate a district and delineate its boundaries and inform the governing body of the county in writing of the reasons for the alteration of the proposed boundaries. Failure of the commissioner to act under this subsection within 60 days, unless the applicant agrees to an extension of time shall mean that the application is approved and the commissioner shall then on the next business day issue an order as required under this subsection. The governing body may, in the case of a disapproval of its application, resubmit an application incorporating whatever revisions it deems appropriate, taking into consideration the commissioner's reasons for disapproval.

c. (1) If the governing body of the county in response to a petition by a municipality under section 15 of this act adopts an ordinance or resolution, as appropriate, stating its intention not to proceed with an application or adopts an ordinance or resolution, as appropriate, stating its intention to proceed with an application but fails to submit such an application within 120 days of adopting that ordinance or resolution, as appropriate, the governing body of the municipality which submitted the original petition or the governing body of any municipality within the county which would be directly affected by the designation and delineation of a district may petition the commissioner for the designation and delineation of a district. The commissioner shall, within 60 days of receipt of a petition and upon review of the petition as to sufficiency and conformity with the purposes of this act, act as in subsection b. of this section, but in the instance where the commissioner acts under paragraph (1) or paragraph (3) of subsection b., the commissioner shall also designate an appropriate governmental organization which has sufficient power to administer the district, and which shall permit representation from all participating municipalities. In addition, where negotiations are underway pursuant to this subsection or subsection b. of this section between the department and the petitioning body the 60 day time frame may be suspended by mutual agreement. The petitioning body may, in the case of a disapproval of its application, resubmit a petition directly to the commissioner incorporating whatever revisions it deems appropriate, taking into consideration the commissioner's reasons for disapproval.

(2) Failure by a county to adopt a resolution stating its intent to submit an application substantially consistent with the municipal petition within 90 days after receipt thereof shall entitle the petitioning municipality or any directly affected municipality to petition the commissioner for the designation and delineation of a district as set forth in paragraph (1) of this subsection.

d. The commissioner shall adopt as regulations under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) standards to assist in the determination of whether there is sufficient evidence of growth conditions prevailing in an area to justify creation of a transportation development district under this act. The criteria for assisting in the determination shall include: (1) an accelerating growth rate for estimated population or employment in excess of 10% in three of the past five years in at least three contiguous municipalities; or, (2) projected local traffic growth in excess of 50% in a five-year period generated from new development; or, (3) commercial/retail development projected at a rate of one million square feet per square mile in a five-year period; or, (4) projected growth in population or in employment in excess of 20% over a 10-year period. The regulations shall specify the application of the time periods under these four criteria. The commissioner may also include in the regulations additional criteria which recognize existing traffic congestion, or any other such criteria which, in the commissioner's judgment, may serve to effectuate the purposes of this act.

The Senate Transportation and Communications Committee, or its successor, and the Assembly Transportation and Communications Committee, or its successor, shall be notified by the commissioner of these standards at the time they are included in a notice of proposed rule-making under the provisions of the "Administrative Procedure Act." In addition, following the adoption of these standards by regulation, the commissioner shall notify the Senate Transportation and Communications Committee, or its successor, and the Assembly Transportation and Communications Committee, or its successor, of any proposed revisions to these standards at the time these revisions are proposed for adoption under the provisions of the "Administrative Procedure Act."

L.1989, c.100, s.4.

27:1C-5. Joint planning process

a. Following the commissioner's designation and delineation of a district under section 4 of this act, the governing body of the county shall initiate a joint planning process for the district, with opportunity for participation by the State, all affected counties and municipalities and private representatives. Each affected governmental unit shall be notified by the county at the commencement of the joint planning process. The joint planning process shall produce a draft district transportation improvement plan and a draft financial plan.

b. The draft district transportation improvement plan shall establish goals and priorities for all modes of transportation within the district, shall incorporate the relevant plans of all transportation agencies within the district and shall contain a program of transportation projects which addresses transportation needs arising from rapid growth conditions prevailing in the district and which therefore warrants financing in whole or in part from a trust fund to be established under section 7 of this act, and shall provide for the assessment of development fees based upon the applicable formula as established by the commissioner by regulation. The draft district transportation improvement plan shall be in accordance with the State transportation master plan adopted under section 5 of P.L.1966, c.301 (C.27:1A-5), the county master plan adopted under R.S.40:27-2, and shall be in conformity with the State Development and Redevelopment Plan adopted under the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.) and, to the extent appropriate, given the district-wide objectives of the plan, coordinated with local zoning ordinances and master plans adopted pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

c. The draft financial plan shall include an identification of projected available financial resources for financing district transportation projects outlined in the draft district transportation improvement plan, including recommendations for types and rates of development fees to be assessed under section 7 of this act, and projected annual revenue to be derived therefrom.

d. The governing body of the county shall make copies of the draft district transportation improvement plan and the draft financial plan available to the public for inspection and shall hold a public hearing on them.

L.1989,c.100,s.5.

27:1C-6. District transportation improvement plan; approval by commissioner

a. The governing body of any county which has completed all the requirements of section 5 of this act may, by ordinance or resolution, as appropriate, adopt a district transportation improvement plan. The district transportation improvement plan shall be derived from the draft district transportation improvement plan developed under section 5 of this act and shall contain a financial plan for transportation projects intended to be developed over time in whole or in part from a trust fund to be established under section 7 of this act. The district transportation improvement plan shall be consistent with any existing capital improvements program, and incorporated into any future capital improvements program required to be adopted under P.L. ...., c. .... (C. .....) (now pending before the Legislature as Assembly Bill No. 2306 or Senate Bill No. 664 of 1988) and shall be consistent with any transportation improvement program which the county may be required to submit to the department.

b. No ordinance or resolution, or amendment or supplement thereto, adopted under this section shall take effect until approved by the commissioner. In evaluating the district transportation improvement plan, the commissioner shall take into consideration: (1) the appropriateness of the district boundaries in light of the findings of the plan, (2) the appropriateness of the content and timing of the program of projects intended to be financed in whole or in part from the district trust fund in relation to the transportation needs stemming from rapid growth in the district, (3) the hearing record of the public hearing held prior to adoption of the ordinance or resolution, (4) any written comments submitted by municipalities or other parties and (5) consistency with the planning requirements set forth in subsection b. of section 5 of this act. The commissioner shall complete the review of the ordinance or resolution and shall inform the governing body in writing of the approval or disapproval thereof within 90 days of receipt. Failure by the commissioner to act in 90 days, unless an extension is mutually approved, shall mean that the submission is deemed approved. The written notice shall be accompanied, in the case of approval, by the commissioner's estimate of the resources which may be available to support implementation of the plan and, in the case of disapproval, by the reasons for that disapproval. The governing body may, in the case of a disapproval, resubmit an ordinance or resolution, as appropriate, or amendment or supplement thereto, incorporating whatever revisions it deems appropriate, taking into consideration the commissioner's reasons for disapproval.

L.1989,c.100,s.6.

27:1C-7. Assessment, collection of development fees

a. After the effective date of an ordinance or resolution, as appropriate, adopted under section 6 of this act, the governing body of the county may provide, by ordinance or resolution, as appropriate, for the assessment and collection of development fees on developments within the district.

b. The ordinance or resolution, as appropriate, shall specify that the fee shall be assessed on a development at the time that the development receives preliminary approval from the municipal approval authority or, where the municipality has not enacted an ordinance requiring approval of the development, at the time that a construction permit is issued. If the development is to be constructed in phases or there is a substantial modification of preliminary approval as defined in the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), the fee shall be assessed at the time of the preliminary approval of the respective phase or at the time of modification, as the case may be. For a development which has received preliminary plan approval prior to the adoption of the ordinance and where final approval is not obtained for that phase of development within three years of preliminary approval, the fee shall be assessed at the time of final approval.

c. The ordinance or resolution, as appropriate, shall specify whether the fee is to be paid at the time a construction permit is issued or in a series of payments, as set forth in a schedule of payments contained in the ordinance or resolution, as appropriate. The ordinance or resolution, as appropriate, may provide for

payment of the fee in a series of periodic payments over a period of no longer than 20 years. The payments due to the county, whether as a lump sum or as balances due, where a series of payments is to be made, shall be enforceable by the county as a lien on the land and any improvements thereon which lien shall be recorded by the appropriate county officer in the record book of the appropriate county office. Any ordinance or resolution, as appropriate, shall set forth the procedures for enforcement of the lien in the event of delinquencies. When the fee is paid in full on the development or portion thereof, the lien on the development or portion thereof, as appropriate, shall be removed. Any ordinance or resolution, as appropriate, shall provide for the procedure by which any portion of the land and any improvements thereon shall be released from the lien required by this section and, shall require that any lien filed in accordance with this section shall contain a provision citing the release procedures. Where a series of payments is to be made, failure to make any one payment within 30 days after receipt of a notice of late payment shall constitute a default and shall obligate the person owing the unpaid balance to pay that balance in its entirety.

d. Any development or phase thereof which has received preliminary approval prior to the development assessment liability date shall not be subject to the assessment and collection of a development fee under this act but shall be liable for the payment of off-site transportation improvements to the extent agreed upon under the applicable law, rule, regulation, ordinance or resolution in effect at the time of the agreement. Any development or phase thereof which receives preliminary approval after the development liability assessment date shall be subject to the assessment and collection of a development fee under this act, but shall receive a credit against the fee for the amount paid or obligated to be paid to State, county or municipal agencies for the cost of off-site transportation improvements under agreements entered into under the applicable law, rule, regulation, ordinance or resolution in effect at the time of the agreement.

e. The ordinance or resolution, as appropriate, also shall provide for the establishment of a transportation development district trust fund under the control of the county treasurer or such other officer as appropriate. All monies collected from development fees and any other monies as may be available for the purposes of this act shall be deposited into the trust fund which is to be invested in an interest bearing account.

f. An ordinance or resolution, as appropriate, adopted under this section also may contain provisions for: (1) delineating a core area within the district within which the conditions justifying creation of the district are most acute and providing for a reduced development fee rate to apply to developments inside that core area; (2) credits against assessed development fees for payments made or expenses incurred which have been determined by the governing body of the county to be in furtherance of the district transportation improvement plan, including but not limited to, contributions to transportation improvements, other than those required for safe and efficient highway access to a development, and costs attributable to the promotion of public transit or ridesharing; (3) exemptions from or reduced rates for development fees for specified land uses which have been determined by the governing body of the county to have a beneficial, neutral or comparatively minor adverse impact on the transportation needs of the district; (4) a reduced rate of development fees for developments for which construction permits were issued after the development assessment liability date but before the effective date of the ordinance or resolution, as appropriate, where those dates are different; and (5) a reduced rate of development fees for developers submitting a peak-hour automobile trip reduction plan approved by the commissioner under standards adopted by the commissioner by regulation. Standards for the approval of peak-hour automobile trip reduction plans may include, but need not be limited to, physical design for improved transit, ridesharing, and pedestrian access; incorporation of residential uses into predominantly nonresidential development; and proximity to potential labor pools. The ordinance or resolution, as appropriate, shall provide for the exemption from assessment of development fees for any development of low and moderate income housing units which are constructed pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et seq.) or under court settlement.

g. An ordinance or resolution, as appropriate, shall specify that any fees collected, plus earned interest, not committed to a transportation project under a project agreement entered into under section 9 of this act within 10 years of the date of collection shall be refunded to the feepayer under a procedure prescribed by the commissioner by regulation for this purpose, except that if the payer of the fee transfers the development or any portion thereof, he shall enter into an agreement with the grantee in such form as shall be provided by

regulation of the commissioner which shall indicate who shall be entitled to receive any refund, and such agreement shall be filed with the designated county officer.

h. An ordinance or resolution, as appropriate, shall be sufficiently certain and definitive to enable every person who may be required to pay a fee to know or calculate the limit and extent of the fee which will be assessed against a specific development proposal. Development fees shall be reasonably related to the added traffic growth attributable to the development which is subject to the assessment and the maximum amount of fees for transportation improvements that may be charged to any development by the State, county or municipality pursuant to this act or any other law shall not exceed the property owner's "fair share" of such improvement costs. "Fair share" means the added traffic growth attributable to the proposed development or phase thereof. Approval of a development application by any State, county or municipal body or agency shall not be withheld or delayed because of the necessity to construct an off-site transportation improvement if the developer has contributed his "fair share" obligation under the provisions of this act.

i. Any person who has been assessed a development fee under the provisions of an ordinance or resolution adopted pursuant to this section may appeal the assessment by filing an appeal with the commissioner within 90 days of the receipt of notification of the amount of the assessment, on the grounds that the governing body or its officers or employees in issuing the assessment did not abide by the provisions of this act or the provisions of the ordinance or resolution issued hereunder or of the rules and regulations adopted by the commissioner pursuant to this act. The decision of the commissioner constitutes an administrative action subject to review by the Appellate Division of the Superior Court. Nothing contained herein shall be construed as limiting the ability of any person so assessed from filing an appeal based upon an agreement to pay or actual payment of the fee.

L.1989,c.100,s.7.

27:1C-8. Formula for assessment

An ordinance or resolution, as appropriate, adopted under section 7 of this act shall provide for the assessment of development fees based upon the formula for that category of district authorized by the commissioner, by regulation, and uniformly applied, with such exceptions as are authorized or required by this act and by regulation. The commissioner may authorize a formula or formulas relating the amount of the fee to impact on the transportation system, including, but not limited to, the following factors: vehicle trips generated by the development, the occupied square footage of a developed structure, the number of employees regularly employed at the development, and the number of parking spaces located at the development. In developing the authorized formula or formulas the commissioner shall consult with knowledgeable persons in appropriate fields, which may include, but need not be limited to, land use law, planning, traffic engineering, real estate development, transportation, and local government. No separate or additional assessments for off-site transportation improvements within the district shall be made by the State, or a county or municipality except as provided in this act.

L.1989,c.100,s.8.

27:1C-9. Project agreement

Every transportation project funded in whole or in part by funds from a transportation development district trust fund shall be subject to a project agreement to which the commissioner is a party. Every transportation project for which a project agreement has been executed shall be included in a district transportation improvement plan adopted by an ordinance or resolution, as appropriate, under section 6 of this act. A project agreement may include other parties, including but not limited to, municipalities and the developers of a project. A project agreement shall provide for the assignment of financial obligations among the parties, and those provisions for discharging respective financial obligations as the parties shall agree upon. A project agreement also shall make provision for those arrangements among the parties as are necessary and convenient for undertaking and completing a transportation project. A project agreement may

provide that a county may pledge funds in a transportation development district trust fund or revenues to be received from development fees for the repayment of debt incurred under any debt instrument which the county may be authorized by law to issue. Each project agreement shall be authorized by and entered into pursuant to an ordinance or resolution, as appropriate, of the governing body of each county and municipality which is a party to the project agreement. Any project agreement may be made with or without consideration and for a specified or an unlimited time and on any terms and conditions which may be approved by or on behalf of the county or municipality and shall be valid whether or not an appropriation with respect thereto is made by the county or municipality prior to the authorization or execution thereof. Any county or municipality which is authorized to undertake all or part of a project which may involve property within the jurisdiction of another political subdivision, may exercise all powers necessary for the project as may be permitted by law and agreed to in the project agreement.

L.1989,c.100,s.9.

27:1C-10. Appropriation of funds

No expenditure of funds shall be made from a transportation development district trust fund except by appropriation by the governing body of the county or other appropriate governmental organization as designated by the commissioner under this act, and upon certification of the county treasurer or the appropriate financial officer of the designated governmental organization, as appropriate, that the expenditure is in accordance with a project agreement entered into under section 9 of this act.

L.1989,c.100,s.10.

27:1C-11. Loans

The commissioner may, subject to the availability of appropriations for this purpose and pursuant to a project agreement entered into under section 9 of this act, make loans to a party to a project agreement for the purpose of undertaking and completing a State-owned transportation project. In this event, the project agreement shall include the obligation of the governing body of the county to make payments to the commissioner for repayment of the loan according to an agreed upon schedule of payments. The commissioner may receive monies from a county for repayment of a loan and pay these monies, or assign his right to receive them, to the New Jersey Transportation Trust Fund Authority, created pursuant to section 4 of P.L.1984, c.73 (C.27:1B-4), in reimbursement of funds paid to him by that authority for the purpose of making loans pursuant to this section.

L.1989,c.100,s.11.

27:1C-12. Adjoining transportation development districts

The governing bodies of two or more counties which have established, or propose to establish, adjoining transportation development districts, and which have determined that joint or coordinated planning or implementation of transportation projects would be beneficial, may enter into joint arrangements under this act, including: (1) filing joint applications under section 4 of this act, (2) initiating a coordinated joint planning process under section 5 of this act, (3) adopting coordinated district transportation improvement plans under section 6 of this act and (4) entering into joint project agreements under section 9 of this act.

L.1989,c.100,s.12.

27:1C-13. Request by commissioner for transportation development district

a. After due examination the commissioner may find, in accordance with regulations adopted pursuant to subsection d. of section 4 of this act, that certain designated areas of the State are growth corridors or growth areas and that existing financial resources and existing mechanisms for securing financial commitments for

transportation improvements are inadequate to meet transportation improvement needs which are the result of rapid development in these corridors or areas. Upon this finding and after sufficient time has elapsed for the governing body of the county or counties located within this corridor or area to take action to establish a district or districts therein pursuant to the provisions of this act and if they have not done so, the commissioner may request the governing body of the county or counties to initiate an application for the designation and delineation of a transportation development district under section 4 of this act. The request shall set forth in detail the reasons which, in the judgment of the commissioner, justify the creation of a transportation development district in conformity with the purpose of this act, which reasons may be based upon a comprehensive development plan for the corridor or area issued by the department after notice and public hearings in the area or corridor in question. The finding by the commissioner that certain areas of the State are growth corridors or growth areas shall not be construed as determining and designating all growth corridors or growth areas in the State and shall not preclude any governing body of a county from establishing a transportation development district within any portion of that county in accordance with the provisions of this act.

b. The governing body of the county shall, within 90 days of the receipt of the request submitted under subsection a. above, respond to the request by adoption of an ordinance or resolution, as appropriate, which shall state the intention of the governing body to proceed or not to proceed with an application for the designation and delineation of a transportation development district under section 4 of this act . If appropriate the ordinance or resolution shall set forth the reasons for not so proceeding. The ordinance or resolution, as appropriate, shall be transmitted to the governing body of each municipality which would, in the judgment of the governing body of the county, be directly affected by the designation and delineation of a transportation development district as proposed in the request.

c. The commissioner may, especially in the case of a corridor or area traversed by a State highway, request the governing bodies of two or more counties to establish adjoining transportation development districts in accordance with the procedures provided for in subsections a. and b. of this section.

d. If the governing body of the county or counties has received a request from the commissioner to initiate an application, or to establish adjoining transportation development districts, and has failed to respond to the commissioner's request within the time permitted or has stated that it does not intend to proceed with an application or otherwise fails to take action to establish the requested district or districts, the commissioner may, upon 90 days' notice to the governing bodies of the county and each municipality directly affected by the designation and delineation of the proposed district, and the holding of a public hearing, where the creation of such a district or districts is critically important, by order designate such a district or districts and delineate its boundaries. The functions, powers and duties of the governing body of the county concerning transportation development districts as authorized by this act shall be exercised by the commissioner through regulations and orders concerning a district created under this subsection in substantially the same manner as would be exercised by the governing body of the county pursuant to this act. In a district so created, development fees shall be assessed by order of the commissioner upon notice and public hearing. These fees shall only be assessed, and disbursed from the transportation development district trust fund, for projects other than county transportation projects. Appeals from these assessments shall be referred to the Office of Administrative Law by the commissioner for a hearing. If the commissioner modifies or rejects the resultant report and decision, the action of the commissioner may be appealed to the Appellate Division of the Superior Court as provided in subsection i. of section 7 of this act. Notwithstanding that a governing body of the county may not have participated in the establishment of a district, the governing body by ordinance or resolution may request the commissioner to permit it to participate fully in the operation of the district. Upon the granting of this request by the commissioner on whatever terms and conditions the commissioner deems appropriate, the governing body of the county shall assume full responsibility for the operation of the district and the assessment of fees, as if the district were established pursuant to an application by the governing body under subsection a. of section 4 of this act.

e. In designating and delineating a district, and in establishing district transportation improvement and financial plans therefor, the commissioner shall act in accordance with regulations adopted as provided in section 18 of this act.

L.1989,c.100,s.13.

27:1C-14. Application for dissolution

a. The governing body of a county within which a transportation development district has been designated under section 4 of this act may, by ordinance or resolution, as appropriate, apply to the commissioner for the dissolution of the district. The application shall include the reasons for the proposed dissolution and a plan for disbursing any funds remaining in the transportation development district trust fund, whether by refunds to owners of property on which the fees were assessed or otherwise, and for concluding the business of the district generally.

b. The commissioner shall, within 60 days of the receipt of a completed application, (1) by order dissolve the district and approve the county's plan for concluding the business of the district or (2) disapprove the application and inform the governing body of the county in writing of the reasons for the disapproval and any conditions or changes in the plan for concluding the business of the district which the commissioner believes to be necessary in the public interest.

L.1989,c.100,s.14.

27:1C-15. Petition by municipal governing body; response by county governing body

a. The governing body of any municipality or municipalities may, by resolution, petition the governing body of the county to initiate an application for the designation and delineation of a transportation development district under section 4 of this act. The resolution shall set forth in detail the reasons which, in the judgment of the governing body or bodies, justify the creation of a transportation development district in conformity with the purpose of this act.

b. The governing body of the county shall, within 90 days of the receipt of a petition submitted under subsection a. above, respond to the petition by adoption of an ordinance or resolution, as appropriate, which shall state the intention of the governing body to proceed or not to proceed with an application for the designation and delineation of a transportation development district under section 4 of this act. If appropriate, the ordinance or resolution shall set forth the reasons for not so proceeding. The ordinance or resolution, as appropriate, shall be transmitted to the governing body or bodies submitting the petition and to the governing body of each municipality which would, in the judgment of the governing body of the county, be directly affected by the designation and delineation of a transportation development district as proposed in the petition.

L.1989,c.100,s.15.

27:1C-16. Limitations

a. Except as provided by this act, no county or municipality may establish or operate a district within the boundaries delineated by the commissioner for a transportation development district under section 4 of this act if the district is for the purpose of consolidating the required contributions for transportation improvements of applicants for development within the district.

b. Approval of a development application by any State, county or municipal body shall not be withheld or delayed because the proposed development is within a proposed or pending transportation development district. The development application shall be considered in accordance with the applicable law, rule, regulation, ordinance or resolution in effect at the time of application.

c. The provisions of this act shall not be construed as affecting municipal reviews and approvals of proposed developments under the provisions of the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

L.1989,c.100,s.16.

27:1C-17. Pre-existing districts

a. If a county has, before the effective date of this act, established a district or districts for the purpose of consolidating the required contributions of applicants for development and implementing a coordinated program of transportation improvements in an area based on these contributions, the governing body of the county may, by ordinance or resolution, as appropriate, apply to the commissioner for the designation and delineation of a transportation development district incorporating the district or districts so established. The application shall include, in addition to the information required under subsection a. of section 4 of this act, a full description and account of the operations of the district or districts so established and any recommendations for alterations to the regulations and procedures of the district or districts the governing body finds necessary or appropriate to conform with the purposes of this act.

b. If a municipality has established a district or districts prior to the effective date of this act, the governing body of the municipality may request the governing body of the county to apply to the commissioner for designation and delineation of a transportation development district to incorporate that district or districts. If the county rejects a request by a municipality to make application to the commissioner for approval of a pre-existing district, or fails to respond to a request within 90 days of receipt of the request, the municipality may apply directly to the commissioner for approval of the district and any transportation improvement and financial plan then in existence pursuant to the procedures set forth in subsection b. of section 4 of this act and subsection b. of section 6 of this act.

c. The operation and financing of any pre-existing districts may continue pending action by the commissioner. In addition, the provisions of section 9 of this act shall not be applicable to projects in pre-existing districts which were the subject of agreements or funding commitments made prior to the effective date of this act. Furthermore, any such project, or any such agreement, shall not be construed to exempt any party from compliance with departmental rules, regulations, or orders.

d. The commissioner shall, within 90 days of receipt of a completed application and upon review of the application as to sufficiency and conformity with the purposes of this act, (1) by order designate a district and delineate its boundaries in conformance with the application, or (2) disapprove the application and inform the governing body of the county in writing of the reasons for the disapproval. The governing body may, in the case of a disapproval of its application, resubmit an application incorporating whatever revisions it deems appropriate, taking into consideration the commissioner's reasons for disapproval.

e. The commissioner may, in an order made under subsection d. of this section designating a district and delineating its boundaries, provide for the waiver or consolidation of any requirements of sections 5 and 6 of this act where, in the commissioner's judgment, that waiver or consolidation is justified by the public interest and by the purposes of this act. The commissioner may also include in the order any other provisions which the commissioner believes to be necessary and desirable for effecting an orderly transition from the operation of a district or districts previously established to the operation of a transportation development district under this act.

L.1989,c.100,s.17.

27:1C-18. Rules, regulations

The commissioner upon notice and the holding of a public hearing shall adopt the rules and regulations, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the purposes of this act, except that any transportation development district trust fund established under section 7 of this act shall be administered in accordance with all of the regulations adopted by the Local Finance Board or the Division of Local Government Services of the Department of Community Affairs which are applicable to county funds generally, and that the Local Finance Board shall have authority to adopt, after consultation with the commissioner, regulations specifically governing the administration of transportation development district trust funds.

L.1989,c.100,s.18.

40:55D-42 Contribution for off-tract water, sewer, drainage, and street improvements.

30.Contribution for off-tract water, sewer, drainage, and street improvements. The governing body may by ordinance adopt regulations requiring a developer, as a condition for approval of a subdivision or site plan, to pay the pro-rata share of the cost of providing only reasonable and necessary street improvements and water, sewerage and drainage facilities, and easements therefor, located off-tract but necessitated or required by construction or improvements within such subdivision or development. Such regulations shall be based on circulation and comprehensive utility service plans pursuant to subsections 19b.(4) and 19b.(5) of this act, respectively, and shall establish fair and reasonable standards to determine the proportionate or pro-rata amount of the cost of such facilities that shall be borne by each developer or owner within a related and common area, which standards shall not be altered subsequent to preliminary approval. Where a developer pays the amount determined as his pro-rata share under protest he shall institute legal action within one year of such payment in order to preserve the right to a judicial determination as to the fairness and reasonableness of such amount.

L.1975,c.291,s.30; amended 1998, c.95, s.8.

40:55D-43. Standards for the establishment of open space organization

a. An ordinance pursuant to this article permitting planned unit development, planned unit residential development or residential cluster may provide that the municipality or other governmental agency may, at any time and from time to time, accept the dedication of land or any interest therein for public use and maintenance, but the ordinance shall not require, as a condition of the approval of a planned development, that land proposed to be set aside for common open space be dedicated or made available to public use.

An ordinance pursuant to this article providing for planned unit development, planned unit residential development, or residential cluster shall require that the developer provide for an organization for the ownership and maintenance of any open space for the benefit of owners or residents of the development, if said open space is not dedicated to the municipality or other governmental agency. Such organization shall not be dissolved and shall not dispose of any open space, by sale or otherwise, except to an organization conceived and established to own and maintain the open space for the benefit of such development, and thereafter such organization shall not be dissolved or dispose of any of its open space without first offering to dedicate the same to the municipality or municipalities wherein the land is located.

b. In the event that such organization shall fail to maintain the open space in reasonable order and condition, the municipal body or officer designated by ordinance to administer this subsection may serve written notice upon such organization or upon the owners of the development setting forth the manner in which the organization has failed to maintain the open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within 35 days thereof, and shall state the date and place of a hearing thereon which shall be held within 15 days of the notice. At such hearing, the designated municipal body or officer, as the case may be, may modify the terms of the original notice as to

deficiencies and may give a reasonable extension of time not to exceed 65 days within which they shall be cured. If the deficiencies set forth in the original notice or in the modification thereof shall not be cured within said 35 days or any permitted extension thereof, the municipality, in order to preserve the open space and maintain the same for a period of 1 year may enter upon and maintain such land. Said entry and maintenance shall not vest in the public any rights to use the open space except when the same is voluntarily dedicated to the public by the owners. Before the expiration of said year, the designated municipal body or officer, as the case may be, shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the open space, call a public hearing upon 15 days written notice to such organization and to the owners of the development, to be held by such municipal body or officer, at which hearing such organization and the owners of the development shall show cause why such maintenance by the municipality shall not, at the election of the municipality, continue for a succeeding year. If the designated municipal body or officer, as the case may be, shall determine that such organization is ready and able to maintain said open space in reasonable condition, the municipality shall cease to maintain said open space at the end of said year. If the municipal body or officer, as the case may be, shall determine such organization is not ready and able to maintain said open space in a reasonable condition, the municipality may, in its discretion, continue to maintain said open space during the next succeeding year, subject to a similar hearing and determination, in each year thereafter. The decision of the municipal body or officer in any such case shall constitute a final administrative decision subject to judicial review.

If a municipal body or officer is not designated by ordinance to administer this subsection, the governing body shall have the same powers and be subject to the same restrictions as provided in this subsection.

c. The cost of such maintenance by the municipality shall be assessed pro rata against the properties within the development that have a right of enjoyment of the open space in accordance with assessed value at the time of imposition of the lien, and shall become a lien and tax on said properties and be added to and be a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the same officers and in the same manner as other taxes.

L.1975, c. 291, s. 31, eff. Aug. 1, 1976.

40:55D-44. Reservation of public areas

If the master plan or the official map provides for the reservation of designated streets, public drainageways, flood control basins, or public areas within the proposed development, before approving a subdivision or site plan, the planning board may further require that such streets, ways, basins or areas be shown on the plat in locations and sizes suitable to their intended uses. The planning board may reserve the location and extent of such streets, ways, basins or areas shown on the plat for a period of 1 year after the approval of the final plat or within such further time as may be agreed to by the developer. Unless during such period or extension thereof the municipality shall have entered into a contract to purchase or institute condemnation proceedings according to law for the fee or a lesser interest in the land comprising such streets, ways, basins or areas, the developer shall not be bound by such reservations shown on the plat and may proceed to use such land for private use in accordance with applicable development regulations. The provisions of this section shall not apply to the streets and roads, flood control basins or public drainageways necessitated by the subdivision or land development and required for final approval.

The developer shall be entitled to just compensation for actual loss found to be caused by such temporary reservation and deprivation of use. In such instance, unless a lesser amount has previously been mutually agreed upon, just compensation shall be deemed to be the fair market value of an option to purchase the land reserved for the period of reservation; provided that determination of such fair market value shall include, but not be limited to, consideration of the real property taxes apportioned to the land reserved and prorated for the period of reservation. The developer shall be compensated for the reasonable increased cost of legal, engineering, or other professional services incurred in connection with obtaining subdivision

approval or site plan approval, as the case may be, caused by the reservation. The municipality shall provide by ordinance for a procedure for the payment of all compensation payable under this section.

L.1975, c. 291, s. 32, eff. Aug. 1, 1976.

New Mexico Development Fees Act

[downloaded January 10, 2011]

CHAPTER 5: MUNICIPALITIES AND COUNTIES
ARTICLE 8: DEVELOPMENT FEES

Section

5-8-1. Short title.

This act [5-8-1 to 5-8-42 NMSA 1978] may be cited as the "Development Fees Act".

5-8-2. Definitions.

As used in the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978]:

A. "affordable housing" means any housing development built to benefit those whose income is at or below eighty percent of the area median income; and who will pay no more than thirty percent of their gross monthly income towards such housing;

B. "approved land use assumptions" means land use assumptions adopted originally or as amended under the Development Fees Act;

C. "assessment" means a determination of the amount of an impact fee;

D. "capital improvement" means any of the following facilities that have a life expectancy of ten or more years and are owned and operated by or on behalf of a municipality or county:

(1) water supply, treatment and distribution facilities; wastewater collection and treatment facilities; and storm water, drainage and flood control facilities;

(2) roadway facilities located within the service area, including roads, bridges, bike and pedestrian trails, bus bays, rights of way, traffic signals, landscaping and any local components of state and federal highways;

(3) buildings for fire, police and rescue and essential equipment costing ten thousand dollars ($10,000) or more and having a life expectancy of ten years or more; and

(4) parks, recreational areas, open space trails and related areas and facilities;

E. "capital improvements plan" means a plan required by the Development Fees Act that identifies capital improvements or facility expansion for which impact fees may be assessed;

F. "county" means a county of any classification;

G. "facility expansion" means the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development, including schools and related facilities;

H. "hook-up fee" means a reasonable fee for connection of a service line to an existing gas, water, sewer or municipal or county utility;

I. "impact fee" means a charge or assessment imposed by a municipality or county on new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, development fees and any other fee that functions as described by this definition. The term does not include hook-up fees, dedication of rights of way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage

facilities, or streets, sidewalks or curbs if the dedication or construction is required by a previously adopted valid ordinance or regulation and is necessitated by and attributable to the new development;

J. "land use assumptions" includes a description of the service area and projections of changes in land uses, densities, intensities and population in the service area over at least a five-year period;

K. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, and H class counties, including any home rule municipality or H class county chartered under the provisions of Article 10, Section 6 of the constitution of New Mexico;

L. "new development" means the subdivision of land; reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units;

M. "qualified professional" means a professional engineer, surveyor, financial analyst or planner providing services within the scope of his license, education or experience;

N. "roadway facilities" means arterial or collector streets or roads that have been designated on an officially adopted roadway plan of the municipality or county, including bridges, bike and pedestrian trails, bus bays, rights of way, traffic signals, landscaping and any local components of state or federal highways;

O. "service area" means the area within the corporate boundaries or extraterritorial jurisdiction of a municipality or the boundaries of a county to be served by the capital improvements or facility expansions specified in the capital improvements plan designated on the basis of sound planning and engineering standards; and

P. "service unit" means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements or facility expansions.

5-8-3. Authorization of fee.

A. Unless otherwise specifically authorized by the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978], no municipality or county may enact or impose an impact fee.

B. If it complies with the Development Fees Act, a municipality or county may enact or impose impact fees on land within its respective corporate boundaries.

C. A municipality and county may enter into a joint powers agreement to provide capital improvements within an area subject to both county and municipal platting and subdivision jurisdiction or extraterritorial jurisdiction and may charge an impact fee under the agreement, but if an impact fee is charged in that area, the municipality and county shall comply with the Development Fees Act.

D. A municipality or county may waive impact fee requirements for affordable housing projects.

5-8-4. Items payable by fee.

A. An impact fee may be imposed only to pay the following specified costs of constructing capital improvements or facility expansions:

(1) estimated capital improvements plan cost;

(2) planning, surveying and engineering fees paid to an independent qualified professional who is not an employee of the municipality or county for services provided for and directly related to the construction of capital improvements or facility expansions;

(3) fees actually paid or contracted to be paid to an independent qualified professional, who is not an employee of the municipality or county, for the preparation or updating of a capital improvements plan; and

(4) up to three percent of total impact fees collected for administrative costs for municipal or county employees who are qualified professionals.

B. Projected debt service charges may be included in determining the amount of impact fees only if the impact fees are used for the payment of principal and interest on bonds, notes or other obligations issued to finance construction of capital improvements or facility expansions identified in the capital improvements plan.

5-8-5. Items not payable by fee.

Impact fees shall not be imposed or used to pay for:

A. construction, acquisition or expansion of public facilities or assets that are not capital improvements or facility expansions identified in the capital improvements plan;

B. repair, operation or maintenance of existing or new capital improvements or facility expansions;

C. upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;

D. upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;

E. administrative and operating costs of a municipality or county except as provided in Paragraph (4) of Subsection A of Section 4 [5-8-4 NMSA 1978] of the Development Fees Act;

F. principal payments or debt service charges on bonds or other indebtedness, except as allowed by Section 4 of the Development Fees Act; or

G. libraries, community centers, schools, projects for economic development and employment growth, affordable housing or apparatus and equipment of any kind, except capital improvements defined in Paragraph (3) of Subsection C [D] of Section 2 [5-8-2 NMSA 1978] of the Development Fees Act.

5-8-6. Capital improvements plan.

A. A municipality or county shall use qualified professionals to prepare the capital improvements plan and to calculate the impact fee. The capital improvements plan shall follow the infrastructure capital improvement planning guidelines established by the department of finance and administration and shall address the following:

(1) a description, as needed to reasonably support the proposed impact fee, which shall be prepared by a qualified professional, of the existing capital improvements within the service area and the costs to upgrade, update, improve, expand or replace the described capital improvements to adequately meet existing needs and usage and stricter safety, efficiency, environmental or regulatory standards;

(2) an analysis, which shall be prepared by a qualified professional, of the total capacity, the level of current usage and commitments for usage of capacity of the existing capital improvements;

(3) a description, which shall be prepared by a qualified professional, of all or the parts of the capital improvements or facility expansions and their costs necessitated by and attributable to new development in the service area based on the approved land use assumptions;

(4) a definitive table establishing the specific level or quantity of use, consumption, generation or discharge of a service unit for each category of capital improvements or facility expansions and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial and industrial;

(5) the total number of projected service units necessitated by and attributable to new development within the service area based on the approved land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;

(6) the projected demand for capital improvements or facility expansions required by new service units accepted over a reasonable period of time, not to exceed ten years; and

(7) anticipated sources of funding independent of impact fees.

B. The analysis required by Paragraph (2) of Subsection A of this section may be prepared on a system-wide basis within the service area for each major category of capital improvement or facility expansion for the designated service area.

C. The governing body of a municipality or county is responsible for supervising the implementation of the capital improvements plan in a timely manner.

5-8-7. Maximum fee per service unit.

The fee shall not exceed the cost to pay for a proportionate share of the cost of system improvements, based upon service units, needed to serve new development.

5-8-8. Time for assessment and collection of fee.

A. Assessments of an impact fee shall be made at the earliest possible time. Collection of the impact fee shall occur at the latest possible time.

B. For land that has been platted in accordance with the subdivision or platting procedures of a municipality or county before the effective date of the Development Fees Act or for land on which new development occurs or is proposed without platting, the municipality or county may assess the impact fees at the time of development approval or issuance of a building permit, whichever date is earlier. The assessment shall be valid for a period of not less than four years from the date of development approval or issuance of a building permit, whichever date is earlier.

C. For land that is platted after the effective date of the Development Fees Act, the municipality or county shall assess the fees at the time of recording of the subdivision plat and this assessment shall be valid for a period of not less than four years from the date of recording of the plat.

D. Collection of impact fees shall occur no earlier than the date of issuance of a building permit.

E. For new development that is platted in accordance with the subdivision or platting procedures of a municipality or county before the adoption of an impact fee, an impact fee shall not be collected on any service unit for which a valid building permit has been issued.

F. After the expiration of the four-year period described in Subsections B and C of this section, a municipality or county may adjust the assessed impact fee to the level of current impact fees as provided in the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978].

5-8-9. Additional fee prohibited; exception.

Except as provided in Subsection F of Section 8 [5-8-8 NMSA 1978] of the Development Fees Act, after assessment of the impact fees attributable to the new development or execution of an agreement for payment of impact fees, additional impact fees or increases in fees may not be assessed for any reason unless the number of service units to be developed increases. In the event of an increase in the number of service units, the impact fees to be imposed are limited to the amount attributable to the additional service units.

5-8-10. Agreement with owner regarding payment.

A municipality or county is authorized to enter into an agreement with the owner of a tract of land for which a plat has been recorded providing for a method of payment of the impact fees over an extended period of time otherwise in compliance with the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978].

5-8-11. Collection of fees if services not available.

Impact fees may be assessed but shall not be collected unless the:

A. collection is made to pay for a capital improvement or facility expansion that has been identified in the capital improvements plan and the municipality or county commits to complete construction within seven years and to have the service available within a reasonable period of time after completion of construction considering the type of capital improvement or facility expansion to be constructed but in no event longer than seven years;
B. municipality or county agrees that the owner of a new development may construct to adopted municipal or county standards or finance the capital improvements or facility expansions and agrees that the costs incurred or funds advanced will be credited against the impact fees otherwise due from the new development or agrees to reimburse the owner for such costs from impact fees paid from other new developments that will use such capital improvements or facility expansions, which fees shall be collected and reimbursed to the property owner of record at the time the plat of the other new development is recorded; or

C. time period set forth in Subsection A of this section can be extended, provided the municipality or county obtains a performance bond or similar surety securing performance of the obligation to construct the capital improvements or facility expansions but in no event longer than seven years from commencement of construction of the capital improvements or facility expansion for which fees have been collected. The municipality or county shall establish written procedures to ensure that the owner of a new development shall not lose the value of the credits. Any refund for fees shall be made as provided in Section 17 [5-8-17 NMSA 1978] of the Development Fees Act.

5-8-12. Entitlement to services.

Any new development for which an impact fee has been paid is entitled to the permanent use and benefit of the services for which the fee was exacted and is entitled to receive prompt service from any existing facilities with actual capacity to serve the new service units.

5-8-13. Authority of municipality or county to spend funds or enter into agreements to reduce fees.

Municipalities or counties may spend funds from any lawful source or pay for all or a part of the capital improvements or facility expansions to reduce the amount of impact fees. A developer and a municipality or county may agree to offset or reduce part or all of the impact fee assessed on that new development,

provided that the public policy which supports the reduction is contained in the appropriate planning documents of the municipality or county and provided that the development's new proportionate share of the system improvement is funded with revenues other than impact fees from other new developments.

5-8-14. Requirement for governmental entities to pay fees.

Governmental entities shall pay all impact fees imposed under the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978].

5-8-15. Credits against facilities fees.

Any construction of, contributions to or dedications of on-site or off-site facilities, improvements, or real or personal property with off-site benefits not required to serve the new development, in excess of minimum municipal and county standards established by a previously adopted and valid ordinance or regulation and required by a municipality or county as a condition of development approval shall be credited against impact fees otherwise due from the development. The credit shall include the value of:

A. dedication of land for parks, recreational areas, open space trails and related areas and facilities or payments in lieu of that dedication; and

B. dedication of rights of way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks or curbs.

5-8-16. Accounting for fees and interest.

A. The order, ordinance or resolution imposing an impact fee shall provide that all money collected through the adoption of an impact fee shall be maintained in separate interest-bearing accounts clearly identifying the payor and the category of capital improvements or facility expansions within the service area for which the fee was adopted.

B. Interest earned on impact fees shall become part of the account on which it is earned and shall be subject to all restrictions placed on the use of impact fees under the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978].

C. Money from impact fees may be spent only for the purposes for which the impact fee was imposed as shown by the capital improvements plan and as authorized by the Development Fees Act.

D. The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours of the municipality or county.

E. As part of its annual audit process, a municipality or county shall prepare an annual report describing the amount of any impact fees collected, encumbered and used during the preceding year by category of capital improvement and service area identified as provided in Subsection A of this section.

5-8-17. Refunds.

A. Upon the request of an owner of the property on which an impact fee has been paid, the municipality or county shall refund the impact fee if existing facilities are available and service is not provided or the municipality or county has, after collecting the fee when service was not available, failed to complete construction within the time allowed under Section 11 [5-8-11 NMSA 1978] of the Development Fees Act or service is not available within a reasonable period of time after completion of construction considering the type of capital improvement or facility expansion to be constructed, but in no event later than seven years from the date of payment under Subsection A of Section 11 of the Development Fees Act.

B. Upon completion of the capital improvements or facility expansions identified in the capital improvements plan, the municipality or county shall recalculate the impact fee using the actual costs of the capital improvements or facility expansion. If the impact fee calculated based on actual costs is less than the impact fee paid, including any sources of funding not anticipated in the capital improvements plan, the municipality or county shall refund the difference if the difference exceeds the impact fee paid by more than ten percent, based upon actual costs.

C. The municipality or county shall refund any impact fee or part of it that is not spent as authorized by the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978] within seven years after the date of payment.

D. A refund shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Section 56-8-3 NMSA 1978.

E. All refunds shall be made to the record owner of the property at the time the refund is paid. However, if the impact fees were paid by a governmental entity, payment shall be made to the governmental entity.

F. The owner of the property on which an impact fee has been paid or a governmental entity that has paid the impact fee has standing to sue for a refund under this section.

5-8-18. Compliance with procedures required.

Except as otherwise provided by the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978], a municipality or county shall comply with that act to levy an impact fee.

5-8-19. Hearing on land use assumptions.

To impose an impact fee, a municipality or county shall schedule and publish notice of a public hearing to consider land use assumptions within the designated service area that will be used to develop the capital improvements plan.

5-8-20. Information about assumptions available to public.

On or before the date of the first publication of the notice of the hearing on land use assumptions, the municipality or county shall make available to the public its land use assumptions, the time period of the projections and a description of the general nature of the capital improvement facilities that may be proposed.

5-8-21. Notice of hearing on land use assumptions.

A. The municipality or county shall publish notice of the hearing conforming to locally adopted regulations governing change-of-zone requests, except as otherwise provided in this section.

B. The notice shall contain:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON LAND
USE ASSUMPTIONS RELATING
TO POSSIBLE ADOPTION OF IMPACT FEES";

(2) the time, date and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the land use assumptions that will be used to develop a capital improvements plan under which an impact fee may be imposed;

(4) an easily understandable map of the service area to which the land use assumptions apply; and

(5) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the land use assumptions.

C. The municipality or county, within thirty days after the date of the public hearing, shall approve or disapprove the land use assumptions.

D. An ordinance, order or resolution approving land use assumptions shall not be adopted as an emergency measure and its adoption must comply with the procedural requirements of the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978].

5-8-22. System-wide land use assumptions.

A. A municipality or county may adopt system-wide land use assumptions for water supply and treatment facilities in lieu of adopting land use assumptions for each service area for such facilities.

B. Prior to adopting system-wide land use assumptions, a municipality or county shall follow the public notice, hearing and other requirements for adopting land use assumptions.

C. After adoption of system-wide land use assumptions, a municipality or county is not required to adopt additional land use assumptions for a service area for water supply, treatment and distribution facilities or wastewater collection and treatment facilities as a prerequisite to the adoption of a capital improvements plan or impact fee, provided the capital improvements plan and impact fee are consistent with the system-wide land use assumptions.

5-8-23. Capital improvements plan required after approval of land use assumptions.

If the governing body adopts an ordinance, order or resolution approving the land use assumptions, the municipality or county shall provide for a capital improvements plan to be developed by qualified professionals using generally accepted engineering and planning practices in accordance with Section 6 [5-8-6 NMSA 1978] of the Development Fees Act.

5-8-24. Hearing on capital improvements plan and impact fee.

Upon completion of the capital improvements plan, the governing body shall schedule and publish notice of a public hearing to discuss the adoption of the capital improvements plan and imposition of the impact fee. The public hearing must be held by the governing body of the municipality or county to discuss the proposed ordinance, order or resolution adopting a capital improvements plan and imposing an impact fee.

5-8-25. Information about plan available to public.

On or before the date of the first publication of the notice of the hearing on the capital improvements plan and impact fee, the plan shall be made available to the public.

5-8-26. Notice of hearing on capital improvements plan and impact fee.

A. The municipality or county shall publish notice of the hearing conforming to locally adopted regulations governing change-of-zone requests, except as otherwise provided in this section.

B. The notice must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON CAPITAL
IMPROVEMENTS PLAN AND
ADOPTION OF IMPACT
FEES";

(2) the time, date and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the proposed capital improvements plan and the adoption of an impact fee;

(4) an easily understandable map of the service area in which the proposed fee will be imposed;

(5) the amount of the proposed impact fee per service unit; and

(6) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the plan and proposed fee.

5-8-27. Advisory committee comments on capital improvements plan and impact fees.

The advisory committee created under Section 37 [5-8-37 NMSA 1978] of the Development Fees Act shall file its written comments on the proposed capital improvements plan and impact fees before the fifth business day before the date of the public hearing on the plan and fees.

5-8-28. Approval of capital improvements plan and impact fee required.

A. The municipality or county, within thirty days after the date of the public hearing on the capital improvements plan and impact fee, shall approve, disapprove or modify the adoption of the capital improvements plan and imposition of an impact fee.

B. An ordinance, order or resolution approving the capital improvements plan and imposition of an impact fee shall not be adopted as an emergency measure and its adoption must comply with the procedural requirements of the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978].

5-8-29. Consolidation of land use assumptions and capital improvements plan.

A. In lieu of separately adopting the land use assumptions and capital improvements plan for a service area containing not greater than three hundred units, a municipality or county may consolidate the land use assumptions and the capital improvements plan, and adopt the assumptions, the plan and the impact fee simultaneously.

B. If a municipality or county elects to consolidate the land use assumptions and capital improvements plan as authorized by Subsection A of this section, the municipality or county shall first comply with Section 20 [5-8-20 NMSA 1978] of the Development Fees Act and follow the public notice and hearing requirements for adopting a capital improvements plan and impact fee as provided in Section 21 [5-8-21 NMSA 1978] of that act, except:

(1) the headline for the notice by publication shall read as follows:

"NOTICE OF PUBLIC HEARING ON
ADOPTION OF LAND USE
ASSUMPTIONS AND
IMPACT FEES";

(2) the notice shall state that the municipality or county intends to adopt land use assumptions, a capital improvements plan and impact fees at the hearing and does not intend to hold separate hearings to adopt the land use assumptions, capital improvements plan and impact fees;

(3) the notice shall specify a date, not earlier than sixty days after publication of the first notice, and must state that if a person, by not later than the date specified, makes a written request for separate hearings, the governing body shall hold separate hearings to adopt the land use assumptions and capital improvements plan; and

(4) the notice shall provide the name and mailing address of the official of the municipality or county to whom a request for separate hearings shall be sent.

C. In addition to the requirements of Subsection B of this section, the municipality or county shall comply with all other requirements for adopting land use assumptions, a capital improvements plan and an impact fee.

5-8-30. Periodic Update of land use assumptions and capital improvements plan required.

A. A municipality or county imposing an impact fee shall update the land use assumptions and capital improvements plan at least every five years. The initial five-year period begins on the day the capital improvements plan is adopted.

B. The municipality or county shall review and evaluate its current land use assumptions and shall cause an update of the capital improvements plan to be prepared in accordance with the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978].

5-8-31. Hearing on updated land use assumptions and capital improvements plan.

The governing body of the municipality or county shall, within sixty days after the date it receives the update of the land use assumptions and the capital improvements plan, schedule and publish notice of a public hearing to discuss and review the update and shall determine whether to amend the plan.

5-8-32. Hearing on amendments to land use assumptions, capital improvements plan or impact fee.

A public hearing shall be held by the governing body of the municipality or county to discuss the proposed ordinance, order or resolution amending land use assumptions, the capital improvements plan or the impact fee. On or before the date of the first publication of the notice of the hearing on the amendments, the land use assumptions and the capital improvements plan, including the amount of any proposed amended impact fee per service unit, shall be made available to the public.

5-8-33. Notice of hearing on amendments to land use assumptions, capital improvements plan or impact fee.

A. The municipality or county shall publish notice of the hearing conforming to locally adopted regulations governing change-of-zone requests, except as otherwise provided in this section.

B. The notice must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON AMENDMENTS
TO LAND USE ASSUMPTIONS, CAPITAL
IMPROVEMENTS PLAN OR
IMPACT FEES";

(2) the time, date and location of the hearing;

(3) a statement that the purpose of the hearing is to consider amendments to land use assumptions, capital improvements plan or impact fees;

(4) an easily understandable description and map of the service area on which the update is being prepared; and

(5) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the update.

5-8-34. Advisory committee comments on amendments.

The advisory committee created under Section 37 [5-8-37 NMSA 1978] of the Development Fees Act shall file its written comments with the applicable municipality or county on the proposed amendments to the land use assumptions, capital improvements plan or impact fees before the fifth business day before the date of the public hearing on the amendments.

5-8-35. Approval of amendments required.

A. The municipality or county, within thirty days after the date of the public hearing on the amendments, shall approve, disapprove, revise or modify the amendments to the land use assumptions, the capital improvements plan or impact fees.

B. An ordinance, order or resolution approving the amendments to the land use assumptions, the capital improvements plan or impact fees shall not be adopted as an emergency measure and such adoption must comply with the procedural requirements of the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978].

5-8-36. Determination that no update of land use assumptions, capital improvements plan or impact fee is needed.

A. If at the time an update under Section 30 [5-8-30 NMSA 1978] of the Development Fees Act is required, the governing body determines that no changes to the land use assumptions, capital improvements plan or impact fees are needed, it may, as an alternative to the updating requirements of Sections 30 through 35 [5-8-30 to 5-8-35 NMSA 1978] of the Development Fees Act, publish notice of its determination conforming to locally adopted regulations governing change-of-zone requests, except as otherwise provided in this section.

B. The notice shall contain the following:

(1) a headline to read as follows:

"NOTICE OF DETERMINATION NOT TO
UPDATE LAND USE ASSUMPTIONS,
CAPITAL IMPROVEMENTS PLAN OR
IMPACT FEES";

(2) a statement that the governing body of the municipality or county has determined that no change to the land use assumptions, capital improvements plan or impact fees are necessary;

(3) an easily understandable description and a map of the service area in which the updating has been determined to be unnecessary;

(4) a statement that if, within a specified date, which date shall be at least sixty days after publication of the notice, a person makes a written request to the designated official of the municipality or county requesting that the land use assumptions, capital improvements plan or impact fees be updated, the governing body may accept or reject such request by following the requirements of Sections 30 through 35 of the Development Fees Act; and

(5) a statement identifying the name and mailing address of the official of the municipality or county to whom a request for an update should be sent.

C. The advisory committee shall file its written comments on the need for updating the land use assumptions, capital improvements plan and impact fees before the fifth business day before the earliest notice of the governing body's decision that no update is necessary is mailed or published.

D. If by the date specified in Paragraph (4) of Subsection B of this section, a person requests in writing that the land use assumptions, capital improvements plan or impact fees be updated, the governing body shall cause, accept or reject an update of the land use assumptions and capital improvements plan to be prepared in accordance with Sections 30 through 35 of the Development Fees Act.

E. An ordinance, order or resolution determining the need for updating land use assumptions, capital improvements plan or impact fees shall not be adopted as an emergency measure and its adoption must comply with the procedural requirements of the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978].

5-8-37. Advisory committee.

A. On or before the date on which the order, ordinance or resolution is adopted under Section 19 [5-8-19 NMSA 1978] of the Development Fees Act, the governing body of a municipality or county shall appoint a capital improvements advisory committee.

B. The advisory committee shall be composed of not less than five members who shall be appointed by a majority vote of the governing body. Not less than forty percent of the membership of the advisory committee must be representative of the real estate, development or building industries. No members shall be employees or officials of a municipality or county or other governmental entity.

C. The advisory committee serves in an advisory capacity and shall:

(1) advise and assist the municipality or county in adopting land use assumptions;

(2) review the capital improvements plan and file written comments;

(3) monitor and evaluate implementation of the capital improvements plan;

(4) file annual reports with respect to the progress of the capital improvements plan and report to the municipality or county any perceived inequities in implementing the plan or imposing the impact fee; and

(5) advise the municipality or county of the need to update or revise the land use assumptions, capital improvements plan and impact fee.

D. The municipality or county shall make available to the advisory committee any professional reports with respect to developing and implementing the capital improvements plan.

E. The governing body of the municipality or county shall adopt procedural rules for the advisory committee to follow in carrying out its duties.

5-8-38. Duties to be performed within time limits.

If the governing body of the municipality or county does not perform a duty imposed under the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978] within the prescribed period, a person who has paid an impact fee or an owner of land on which an impact fee has been paid has the right to present a written request to the governing body of the municipality or county stating the nature of the unperformed duty and requesting that it be performed within sixty days after the date of the request. If the governing body of the municipality or county finds that the duty is required under the Development Fees Act and is late in being performed, it shall cause the duty to commence within sixty days after the date of the request and continue until completion.

5-8-39. Records of hearings.

A record shall be made of any public hearing provided for by the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978]. The record shall be maintained and be made available for public inspection by the municipality or county for at least ten years after the date of the public hearing.

5-8-40. Prior impact fees replaced by fees under development fees act.

An impact fee that is in place on the effective date of the Development Fees Act [5-8-1 to 5-8-42 NMSA 1978] shall be replaced by an impact fee imposed under that act by July 1, 1995. Any municipality or county having an impact fee that has not been replaced under that act by July 1, 1995 shall be liable to any party who, after the effective date of that act, pays an impact fee that exceeds the maximum permitted under that act by more than ten percent for an amount equal to two times the difference between the maximum impact fee allowed and the actual impact fee imposed, plus reasonable attorneys' fees and court costs.

5-8-41. No effect on taxes or other charges.

The Development Fees Act [5-8-1 to 5-8-42 NMSA 1978] does not prohibit, affect or regulate any tax, fee, charge or assessment specifically authorized by state law.

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5-8-42. Moratorium on development prohibited.

A moratorium shall not be placed on new development for the sole purpose of awaiting the completion of all or any part of the process necessary to develop, adopt or update impact fees.

North Carolina Water and Sewer System Development Fees

North Carolina General Statutes
Chapter 162A: Water and Sewer Systems
Article 8: System Development Fees.

[Article added by HB 436, 2017-2018 Regular Session, signed by Governor July 20, 2017, downloaded Sept4ember 14, 2018]

§ 162A-200. Short title.

This Article shall be known and may be cited as the "Public Water and Sewer System Development Fee Act." (2017-138, s. 1.)

§ 162A-201. Definitions.

The following definitions apply in this Article:

(1) Capital improvement. – A planned facility or expansion of capacity of an existing facility other than a capital rehabilitation project necessitated by and attributable to new development.

(2) Capital rehabilitation project. – Any repair, maintenance, modernization, upgrade, update, replacement, or correction of deficiencies of a facility, including any expansion or other undertaking to increase the preexisting level of service for existing development.

(3) Existing development. – Land subdivisions, structures, and land uses in existence at the start of the written analysis process required by G.S. 162A-205, no more than one year prior to the adoption of a system development fee.

(4) Facility. – A water supply, treatment, storage, or distribution facility, or a wastewater collection, treatment, or disposal facility, including for reuse or reclamation of water, owned or operated, or to be owned or operated, by a local governmental unit and land associated with such facility.

(5) Local governmental unit. – Any political subdivision of the State that owns or operates a facility, including those owned or operated pursuant to local act of the General Assembly or pursuant to Part 2 of Article 2 of Chapter 130A, Article 15 of Chapter 153A, Article 16 of Chapter 160A, or Articles 1, 4, 5, 5A, or 6 of Chapter 162A of the General Statutes.

(6) New development. – Any of the following occurring after the date a local government begins the written analysis process required by G.S. 162A-205, no more than one year prior to the adoption of a system development fee, which increases the capacity necessary to serve that development

a. The subdivision of land.

b. The construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure which increases the number of service units.

c. Any use or extension of the use of land which increases the number of service units.

(7) Service. – Water or sewer service, or water and sewer service, provided by a local governmental unit.

(8) Service unit. – A unit of measure, typically an equivalent residential unit, calculated in accordance with generally accepted engineering or planning standards.

(9) System development fee. – A charge or assessment for service imposed with respect to new development to fund costs of capital improvements necessitated by and attributable to such new development, to recoup costs of existing facilities which serve such new development, or a combination of those costs, as provided in this Article. The term includes amortized charges, lump-sum charges, and any other fee that functions as described by this definition regardless of terminology. The term does not include any of the following:

a. A charge or fee to pay the administrative, plan review, or inspection costs associated with permits required for development.

b. Tap or hookup charges for the purpose of reimbursing the local governmental unit for the actual cost of connecting the service unit to the system.

c. Availability charges.

d. Dedication of capital improvements on-site, adjacent, or ancillary to a development absent a written agreement providing for credit or reimbursement to the developer pursuant to G.S. 153A-280, 153A-451, 160A-320, 160A-499 or Part 3A of Article 18, Chapter 153A or Part 3D of Article 19, Chapter 160A of the General Statutes.

e. Reimbursement to the local governmental unit for its expenses in constructing or providing for water or sewer utility capital improvements adjacent or ancillary to the development if the owner or developer has agreed to be financially responsible for such expenses; however, such reimbursement shall be credited to any system development fee charged as set forth in G.S. 162A-207(c).

(10) System development fee analysis. – An analysis meeting the requirements of G.S. 162A-205. (2017-138, s. 1.)

§ 162A-202: Reserved for future codification purposes.

§ 162A-203. Authorization of system development fee.

(a) A local governmental unit may adopt a system development fee for water or sewer service only in accordance with the conditions and limitations of this Article.

(b) A system development fee adopted by a local governmental unit under any lawful authority other than this Article and in effect on October 1, 2017, shall be conformed to the requirements of this Article not later than July 1, 2018. (2017-138, s. 1.)

§ 162A-204: Reserved for future codification purposes.

§ 162A-205. Supporting analysis.

A system development fee shall be calculated based on a written analysis, which may constitute or be included in a capital improvements plan, that:

(1) Is prepared by a financial professional or a licensed professional engineer qualified by experience and training or education to employ generally accepted accounting, engineering, and planning methodologies to calculate system development fees for public water and sewer systems.

(2) Documents in reasonable detail the facts and data used in the analysis and their sufficiency and reliability.

(3) Employs generally accepted accounting, engineering, and planning methodologies, including the buy-in, incremental cost or marginal cost, and combined cost methods for each service, setting forth appropriate

analysis as to the consideration and selection of a method appropriate to the circumstances and adapted as necessary to satisfy all requirements of this Article.

(4) Documents and demonstrates the reliable application of the methodologies to the facts and data, including all reasoning, analysis, and interim calculations underlying each identifiable component of the system development fee and the aggregate thereof.

(5) Identifies all assumptions and limiting conditions affecting the analysis and demonstrates that they do not materially undermine the reliability of conclusions reached.

(6) Calculates a final system development fee per service unit of new development and includes an equivalency or conversion table for use in determining the fees applicable for various categories of demand.

(7) Covers a planning horizon of not less than 10 years nor more than 20 years.

(8) Is adopted by resolution or ordinance of the local governmental unit in accordance with G.S. 162A-209. (2017-138, s. 1.)

§ 162A-206: Reserved for future codification purposes.

§ 162A-207. Minimum requirements.

(a) Maximum. – A system development fee shall not exceed that calculated based on the system development fee analysis.

(b) Revenue Credit. – In applying the incremental cost or marginal cost, or the combined cost, method to calculate a system development fee with respect to water or sewer capital improvements, the system development fee analysis must include as part of that methodology a credit against the projected aggregate cost of water or sewer capital improvements. That credit shall be determined based upon generally accepted calculations and shall reflect a deduction of either the outstanding debt principal or the present value of projected water and sewer revenues received by the local governmental unit for the capital improvements necessitated by and attributable to such new development, anticipated over the course of the planning horizon. In no case shall the credit be less than twenty-five percent (25%) of the aggregate cost of capital improvements.

(c) Construction or Contributions Credit. – In calculating the system development fee with respect to new development, the local governmental unit shall credit the value of costs in excess of the development's proportionate share of connecting facilities required to be oversized for use of others outside of the development. No credit shall be applied, however, for water or sewer capital improvements on-site or to connect new development to water or sewer facilities. (2017-138, s. 1.)

§ 162A-208: Reserved for future codification purposes.

§ 162A-209. Adoption and periodic review.

(a) For not less than 45 days prior to considering the adoption of a system development fee analysis, the local governmental unit shall post the analysis on its Web site and solicit and furnish a means to submit written comments, which shall be considered by the preparer of the analysis for possible modifications or revisions.

(b) After expiration of the period for posting, the governing body of the local governmental unit shall conduct a public hearing prior to considering adoption of the analysis with any modifications or revisions.

(c) The local governmental unit shall publish the system development fee in its annual budget or rate plan or ordinance. The local governmental unit shall update the system development fee analysis at least every five years. (2017-138, s. 1.)

§ 162A-210: Reserved for future codification purposes.

§ 162A-211. Use and administration of revenue.

(a) Revenue from system development fees calculated using the incremental cost method or marginal cost method, exclusively or as part of the combined cost method, shall be expended only to pay:

(1) Costs of constructing capital improvements including, and limited to, any of the following:

a. Construction contract prices.

b. Surveying and engineering fees.

c. Land acquisition cost.

d. Principal and interest on bonds, notes, or other obligations issued by or on behalf of the local governmental unit to finance any costs for an item listed in sub-subdivisions a. through c. of this subdivision.

(2) Professional fees incurred by the local governmental unit for preparation of the system development fee analysis.

(3) If no capital improvements are planned for construction within five years or the foregoing costs are otherwise paid or provided for, then principal and interest on bonds, notes, or other obligations issued by or on behalf of a local governmental unit to finance the construction or acquisition of existing capital improvements.

(b) Revenue from system development fees calculated using the buy-in method may be expended for previously completed capital improvements for which capacity exists and for capital rehabilitation projects. The basis for the buy-in calculation for previously completed capital improvements shall be determined by using a generally accepted method of valuing the actual or replacement costs of the capital improvement for which the buy-in fee is being collected less depreciation, debt credits, grants, and other generally accepted valuation adjustments.

(c) A local governmental unit may pledge a system development fee as security for the payment of debt service on a bond, note, or other obligation subject to compliance with the foregoing limitations.

(d) System development fee revenues shall be accounted for by means of a capital reserve fund established pursuant to Part 2 of Article 3 of Chapter 159 of the General Statutes and limited as to expenditure of funds in accordance with this section. (2017-138, s. 1.)

§ 162A-212: Reserved for future codification purposes.

§ 162A-213. Time for collection of system development fees.

For new development involving the subdivision of land, the system development fee shall be collected by a local governmental unit either at the time of plat recordation or when water or sewer service for the subdivision or other development is committed by the local governmental unit. For all other new development, the local governmental unit shall collect the system development fee at the time of application for connection of the individual unit of development to the service or facilities. (2017-138, s. 1.)

§ 162A-214: Reserved for future codification purposes.

§ 162A-215. Narrow construction.

Notwithstanding G.S. 153A-4 and G.S. 160A-4, in any judicial action interpreting this Article, all powers conferred by this Article shall be narrowly construed to ensure that system development fees do not unduly burden new development. (2017-138, s. 1.)

Oklahoma Municipal Development Fee Act

[downloaded January 3, 2015 – unchanged May 20, 2022]

§62-895. Municipal development fees.

A. Municipalities that adopt ordinances, resolutions, or regulations for the implementation and collection of development fees shall provide that such development fees are adopted and governed pursuant to the provisions of this section. As used in this section:

1. "Development fee" means any payment of money imposed, in whole or in part, as a condition of approval of any building permit, plat approval, or zoning change, to the extent the fee is to pay for public infrastructure systems that are attributable to new development or to expand or modify existing development;

2. "Expanded or modified development" is one in which the expansion or modification results in an increased demand or increased impact upon the public infrastructure system as compared to the demand or impact prior to the expansion or modifications;

3. "Public infrastructure system" includes any real property improvement, fixture, or accession that is included within, but not limited to, any of the following categories of public systems:

a. water systems, including supply, production, treatment, and distribution facilities,

b. wastewater systems, including collection, treatment, and disposal facilities,

c. street systems, including roads, streets, boulevards, bridges, sidewalks, bicycle routes, drainage, traffic signals and systems, traffic control devices and signage, traffic calming devices, landscaping associated with street rights-of-way, and any local components of county, state, or federal highways to the extent and to the proportionate cost that the local components are not funded by state or federal grants or other state or federal permanent funding sources,

d. storm water systems, including collection, retention, detention, treatment, channelization, disposal, discharge, flood control, and bank and shoreline protection facilities,

e. parks systems, including parks, open spaces, trails, bicycle paths, and natural recreation areas and related facilities,

f. public safety systems, including police, fire, emergency medical, and rescue facilities,

g. solid waste systems, including facilities,

h. public transportation systems, including facilities, and

i. public capital improvement communications facilities; and

4. "Public infrastructure system costs" means capital improvements that have a projected useful life of at least ten (10) years or more, and that result in an increase or expansion to the functional service capacity of that public infrastructure system.

B. New development and expanded or modified existing development may only be charged the development fee for capital improvement costs for increases or expansion to the capacity of public infrastructure systems attributable to that development.

1. Development fees shall not exceed a clear, ascertainable, and reasonably determined proportionate share of the cost of capital improvement to the public infrastructure system attributable to the expansion or increase in functional service capacity generated, or to be generated by, the development being charged the fee. There shall be a clearly established functional nexus between the purpose and amount of the development fee being charged and the development against which the fee is charged. In determining the development fee, the municipality shall make a documented effort to quantify the projected impact from development and determine that the proposed development fee is reasonably and roughly proportional to the nature and extent of the impact of development.

2. Development fees cannot be adopted or used to fund repairs, maintenance, restorations, refurbishments, alterations, improvements, or fixes to existing public infrastructure systems in any way that does not result in an increase or expansion in the functional service capacity of the system which is available to serve new or expanded existing growth and development in the applicable service area.

3. The development fees shall be based on actual system improvement costs or reliable, ascertainable and reasonable projected estimates of the costs. Any estimates of costs shall be based upon factual and historically realized costs for similar system capital improvements.

4. Development fees may only be imposed to recover or fund the costs of public infrastructure system capital improvements, including, but not limited to, the cost of real property interest acquisitions, rights-of-ways, capital improvements, design, construction, inspection, and capital improvement construction administration, related to one or more public infrastructure systems.

C. A municipal development fee ordinance, resolution, or regulation shall provide for the following:

1. A schedule of development fees specifying the development fee for various land uses per unit of development, the purpose for the development fee, and termination of the development fee when the applicable public infrastructure system has been fully funded and the expanded or modified development has no additional impact on the public infrastructure system; and

2. A component capital improvement plan that:

a. lists public infrastructure system capital projects or facility expansions that are necessitated by development of various land uses in designated areas,

b. provides reasonable notice to developers of specific public infrastructure system impacts from development of various land uses within the area of the development, and

c. delineates the property locations that are clearly served by the public infrastructure system that will be funded through the development fee.

In the alternative, a municipality may establish one or more service areas for the collection of development fees. As used in this section, "service area" means a geographic area defined by a municipality in which a defined public infrastructure system provides service to developments within that service area. Service areas shall be carefully drawn so as to include only property locations that are clearly served by the cost of capital improvements that increase or expand the functional service capacity of the public infrastructure system that will be funded through the development fee that is associated with the service area. The determinations regarding the establishment of one or more service areas will be a matter of legislative determination and discretion. Different public infrastructure systems may have different and separately defined service areas unique to each system's

coverage. The development fees within a particular service area may be different as applied to different types of land uses; and

3. An adoption process that provides for at least the following before any development fees, capital improvement plan, service plan, or creation of service areas shall become effective:

a. a public hearing before the municipal planning commission. Notice of the time, date and place of the hearing shall be published in a newspaper of general circulation in the municipality at least fifteen (15) days prior to the hearing,

b. a subsequent public hearing before the municipal governing body. Notice of the time, date and place of the hearing shall be published in a newspaper of general circulation in the municipality at least fifteen (15) days prior to the hearing.

All duly enacted ordinances, resolutions, or regulations existing at the time of the effective date of this section shall remain in full force and effect; provided, no existing impact or development fees shall be amended, modified, or renewed except in accordance with this act.

D. The development fees collected pursuant to a component capital improvement plan or within a service area, and any interest on the funds, shall be spent only for capital improvements that expand or increase the functional service capacity of that particular public infrastructure system to serve the area encompassing the development or only within that service area from which the funds were collected.

1. Every assessment of a development fee shall be in writing and a copy shall be provided to the developer and property owner(s) affected, as such names and addresses of the property owner(s) are provided by the developer. The assessment shall specify the purpose or service area for which the development fee is being collected, the basis for calculation of the assessment, and the amount of the assessment. No development fee collected for one purpose shall be devoted to another purpose except as hereinafter provided.

2. If the purpose, component capital improvement plan, or service area is changed or redrawn, or if a development spans more than one component capital improvement plan or service area, the development fees collected prior to the change shall be spent proportionately pursuant to the new purpose or within the new component capital improvement plan or service area or areas that encompass the development at the time of expenditure from which the fee was originally collected. Any change or expansion in a purpose, component capital improvement plan, or service area shall be done through the full hearing process as set forth in paragraph 3 of subsection C of this section.

E. Each municipality shall present an annual report to its governing body on:

1. The collection, investment, and expenditure of development-fee funds as separately reported upon for each development capital project or service area, and each public infrastructure system for each development capital project or in each service area;

2. The recovery of costs from development-fee revenues; and

3. Estimates of the timing of system-capacity-expansion improvements, as such construction is funded by development fees.

If the municipality determines that the development fees as collected within a service area are no longer needed or desired for the purpose for which they were collected, the municipality may either refund the collected fees to the current owners of the property within the development for which the fees were paid, or proceed through the hearing process as set forth in paragraph 3 of subsection C of this section in order to adopt a new purpose for the fees.

F. Municipalities may establish a process for the collection of development fees to occur at a point in time no earlier than the issuance of a building permit.

G. Municipalities may enter into written agreements with developers to construct capital improvements to expand or increase the functional service capacity of a public infrastructure system within the designated development area or to serve a service area and provide a credit against or an adjustment to payment of all or part of the development fee for that system and that development. The credit or adjustment may not exceed the cost of the capital improvement or the amount of the development fee that would have been collected from that developer for the development and that system. No credit or adjustment will be carried over or transferred to a different development, a subsequent development, a subsequent change to that development, or against a development fee for a different system.

H. Nothing in this section will:

1. Preclude a municipality from requiring the developer to donate or dedicate real property or capital improvements, or to install, construct, operate, maintain, or repair capital improvements; or

2. Require a credit against or an adjustment to a development fee for contribution of, or to the cost of, any real property or capital improvement provided by a developer if the direct cost of the specific contribution is not specifically and directly included in the calculation of the applicable development fees.

I. No credit or adjustment shall be carried over from one development to a development at a different location. No credit or adjustment will be carried over from one development to a subsequent development at the same location, unless the development fee collected previously is for the same purpose, making any subsequent collection a repeat charge for the same purpose.

J. Development fees shall be deemed dedicated and restricted revenues and therefore shall require accounting for development proceeds as restricted funds. Interest earned on development fees shall be considered funds of the account on which it is earned and shall be subject to all restrictions placed on the use of development fees under the provisions of this section. The accounting records and details thereof shall be maintained as public records of the municipality, be accessible to the public through open records requests, and include at least the following information, as relates both to each development capital project or service area and each public infrastructure system for each development capital project or within each service area:

1. The receipt of development fees;

2. The development capital project or service area from which the development fee was collected;

3. The accumulation of interest on the development fee funds;

4. The type of public infrastructure system for which the funds were collected;

5. The cost of the capital improvements to which the development fees were applied; and

6. The dates when development fee funds were expended to fund, or applied to reimburse, the cost of capital improvements to public infrastructure systems.

K. Any ordinance, resolution, or regulation adopted in compliance with this section which is thereafter challenged in any future court action shall be reviewed through rational-basis scrutiny, such that it shall be upheld if it substantially complies with this section and if the municipality documented reasonably conceivable facts that provided a rational basis for the adoption.

L. No municipality is required to adopt development fees and it is within the discretion of the municipality as to whether development fees should be considered for adoption. Any municipal development fee ordinance, resolution, or regulation may provide for appeal to the governing body for exemption of all or part of particular development projects from development fees if:

1. The projects are determined to create desirable economic development, quality jobs, a type of desirable land use that is in short supply within the municipality, or affordable housing; or

2. The exempt development project's proportionate share of the system expansion improvements is funded through a revenue source other than development fees.

M. Any payment of a development fee by a payor shall not be deemed to have waived the standing or rights of the payor to later challenge or protest the payment as being invalid and not required.

N. A municipality may not recover the public infrastructure system costs as a development fee by way of connection fees, hook-up fees or other fees in any manner that results in charges beyond the public infrastructure system cost that the development fee already collected. Any connection fees, hook-up fees or any other fees charged by a municipality as related to the cost of capital improvements necessary to increase or expand the functional service capacity of public infrastructure systems shall be determined relative to the functional service capacity actually being provided or made available to the fee payor, and any amounts in excess thereof shall be considered development fees and may only be applied if put forth in accordance with this section. Nothing herein shall prevent a municipality to separately impose and collect connection fees, hook-up fees or any other fees that are reasonably related in character and amount charged to the costs of regulation of the activities for which the fees were enacted or enforcement of municipal health or safety codes.

O. This section shall not prohibit municipalities from self-funding capital improvements by use of pay-back agreements utilizing recoupment districts or lease-purchase agreements in order to finance improvements to public infrastructure systems, by borrowing or on a cash basis, so long as such procedures are utilized in a manner that is consistent with the requirements of this section to the extent such procedures pertain to development fees. Nothing in this section shall limit, regulate, or prohibit a municipality from investing public resources in public infrastructure systems in anticipation of development, recovering those public resources through proportional reimbursement payments equal to the total cost of the public investment in those public infrastructure systems, and subsequently expending the proceeds from those reimbursement payments for any purpose determined by the jurisdiction.

Added by Laws 2011, c. 205, § 1, eff. Nov. 1, 2011.

Oregon Impact Fee Act

[downloaded February 11, 2005]

223.297 Policy.

The purpose of ORS 223.297 to 223.314 is to provide a uniform framework for the imposition of system development charges by local governments, to provide equitable funding for orderly growth and development in Oregon's communities and to establish that the charges may be used only for capital improvements. [1989 c.449 §1; 1991 c.902 §25; 2003 c.765 §1; 2003 c.802 §17]

Note: 223.297 to 223.314 were added to and made a part of 223.205 to 223.295 by legislative action, but were not added to and made a part of the Bancroft Bonding Act. See section 10, chapter 449, Oregon Laws 1989.

223.299 Definitions for ORS 223.297 to 223.314. As used in ORS 223.297 to 223.314:

(1) (a) "Capital improvement" means facilities or assets used for the following:

(A) Water supply, treatment and distribution;

(B) Waste water collection, transmission, treatment and disposal;

(C) Drainage and flood control;

(D) Transportation; or

(E) Parks and recreation.

(b) "Capital improvement" does not include costs of the operation or routine maintenance of capital improvements.

(2) "Improvement fee" means a fee for costs associated with capital improvements to be constructed.

(3) "Reimbursement fee" means a fee for costs associated with capital improvements already constructed, or under construction when the fee is established, for which the local government determines that capacity exists.

(4) (a) "System development charge" means a reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement or issuance of a development permit, building permit or connection to the capital improvement. "System development charge" includes that portion of a sewer or water system connection charge that is greater than the amount necessary to reimburse the local government for its average cost of inspecting and installing connections with water and sewer facilities.

(b) "System development charge" does not include any fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed upon a land use decision, expedited land division or limited land use decision. [1989 c.449 §2; 1991 c.817 §29; 1991 c.902 §26; 1995 c.595 §28; 2003 c.765 §2a; 2003 c.802 §18]

223.300 [Repealed by 1975 c.642 §26]

223.301 Certain system development charges and methodologies prohibited.

(1) As used in this section, "employer" means any person who contracts to pay remuneration for, and secures the right to direct and control the services of, any person.

(2) A local government may not establish or impose a system development charge that requires an employer to pay a reimbursement fee or an improvement fee based on:

(a) The number of individuals hired by the employer after a specified date; or

(b) A methodology that assumes that costs are necessarily incurred for capital improvements when an employer hires an additional employee.

(3) A methodology set forth in an ordinance or resolution that establishes an improvement fee or a reimbursement fee shall not include or incorporate any method or system under which the payment of the fee or the amount of the fee is determined by the number of employees of an employer without regard to new construction, new development or new use of an existing structure by the employer. [1999 c.1098 §2; 2003 c.802 §19]

223.302 System development charges; use of revenues; review procedures.

(1) Local governments are authorized to establish system development charges, but the revenues produced therefrom must be expended only in accordance with ORS 223.297 to 223.314. If a local government expends revenues from system development charges in violation of the limitations described in ORS 223.307, the local government shall replace the misspent amount with moneys derived from sources other than system development charges. Replacement moneys must be deposited in a fund designated for the system development charge revenues not later than one year following a determination that the funds were misspent.

(2) Local governments shall adopt administrative review procedures by which any citizen or other interested person may challenge an expenditure of system development charge revenues. Such procedures shall provide that such a challenge must be filed within two years of the expenditure of the system development charge revenues. The decision of the local government shall be judicially reviewed only as provided in ORS 34.010 to 34.100.

(3) (a) A local government must advise a person who makes a written objection to the calculation of a system development charge of the right to petition for review pursuant to ORS 34.010 to 34.100.

(b) If a local government has adopted an administrative review procedure for objections to the calculation of a system development charge, the local government shall provide adequate notice regarding the procedure for review to a person who makes a written objection to the calculation of a system development charge. [1989 c.449 §3; 1991 c.902 §27; 2001 c.662 §2; 2003 c.765 §3; 2003 c.802 §20]

223.304 Determination of amount of system development charges; methodology; credit allowed against charge; limitation of action contesting methodology for imposing charge; notification request.

(1) (a) Reimbursement fees must be established or modified by ordinance or resolution setting forth a methodology that is, when applicable, based on:

(A) Ratemaking principles employed to finance publicly owned capital improvements;

(B) Prior contributions by existing users;

(C) Gifts or grants from federal or state government or private persons;

(D) The value of unused capacity available to future system users or the cost of the existing facilities; and

(E) Other relevant factors identified by the local government imposing the fee.

(b) The methodology for establishing or modifying a reimbursement fee must:

(A) Promote the objective of future system users contributing no more than an equitable share to the cost of existing facilities.

(B) Be available for public inspection.

(2) Improvement fees must:

(a) Be established or modified by ordinance or resolution setting forth a methodology that is available for public inspection and demonstrates consideration of:

(A) The projected cost of the capital improvements identified in the plan and list adopted pursuant to ORS 223.309 that are needed to increase the capacity of the systems to which the fee is related; and

(B) The need for increased capacity in the system to which the fee is related that will be required to serve the demands placed on the system by future users.

(b) Be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future users.

(3) A local government may establish and impose a system development charge that is a combination of a reimbursement fee and an improvement fee, if the methodology demonstrates that the charge is not based on providing the same system capacity.

(4) The ordinance or resolution that establishes or modifies an improvement fee shall also provide for a credit against such fee for the construction of a qualified public improvement. A "qualified public improvement" means a capital improvement that is required as a condition of development approval, identified in the plan and list adopted pursuant to ORS 223.309 and either:

(a) Not located on or contiguous to property that is the subject of development approval; or

(b) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

(5) (a) The credit provided for in subsection (4) of this section is only for the improvement fee charged for the type of improvement being constructed, and credit for qualified public improvements under subsection (4)(b) of this section may be granted only for the cost of that portion of such improvement that exceeds the local government's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under subsection (4)(b) of this section.

(b) A local government may deny the credit provided for in subsection (4) of this section if the local government demonstrates:

(A) That the application does not meet the requirements of subsection (4) of this section; or

(B) By reference to the list adopted pursuant to ORS 223.309, that the improvement for which credit is sought was not included in the plan and list adopted pursuant to ORS 223.309.

(c) When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project. This subsection does not prohibit a local government from providing a greater credit, or from establishing a system providing for the transferability of credits, or from providing a credit for a capital improvement not identified in the plan and list adopted pursuant to ORS 223.309, or from providing a share of the cost of such improvement by other means, if a local government so chooses.

(d) Credits must be used in the time specified in the ordinance but not later than 10 years from the date the credit is given.

(6) Any local government that proposes to establish or modify a system development charge shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of a methodology for any system development charge.

(7) (a) Written notice must be mailed to persons on the list at least 90 days prior to the first hearing to establish or modify a system development charge, and the methodology supporting the system development charge must be available at least 60 days prior to the first hearing. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the local government. The local government may periodically delete names from the list, but at least 30 days prior to removing a name from the list shall notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.

(b) Legal action intended to contest the methodology used for calculating a system development charge may not be filed after 60 days following adoption or modification of the system development charge ordinance or resolution by the local government. A person shall request judicial review of the methodology used for calculating a system development charge only as provided in ORS 34.010 to 34.100.

(8) A change in the amount of a reimbursement fee or an improvement fee is not a modification of the system development charge methodology if the change in amount is based on:

(a) A change in the cost of materials, labor or real property applied to projects or project capacity as set forth on the list adopted pursuant to ORS 223.309; or

(b) The periodic application of one or more specific cost indexes or other periodic data sources. A specific cost index or periodic data source must be:

(A) A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property or a combination of the three;

(B) Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and

(C) Incorporated as part of the established methodology or identified and adopted in a separate ordinance, resolution or order. [1989 c.449 §4; 1991 c.902 §28; 1993 c.804 §20; 2001 c.662 §3; 2003 c.765 §§4a,5a; 2003 c.802 §21]

Note: The amendments to 223.304 by section 5a, chapter 765, Oregon Laws 2003, become operative July 1, 2004. See section 10, chapter 765, Oregon Laws 2003, as amended by section 10a, chapter 765, Oregon Laws 2003. The text that is operative until July 1, 2004, including amendments by section 4a, chapter 765, Oregon Laws 2003, and section 21, chapter 802, Oregon Laws 2003, is set forth for the user's convenience.

223.305 [Repealed by 1971 c.325 §1]

223.307 Authorized expenditure of system development charges.

(1) Reimbursement fees may be spent only on capital improvements associated with the systems for which the fees are assessed including expenditures relating to repayment of indebtedness.

(2) Improvement fees may be spent only on capacity increasing capital improvements, including expenditures relating to repayment of debt for such improvements. An increase in system capacity may be established if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the improvements funded by improvement fees must be related to the need for increased capacity to provide service for future users.

(3) System development charges may not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements or for the expenses of the operation or maintenance of the facilities constructed with system development charge revenues.

(4) Any capital improvement being funded wholly or in part with system development charge revenues must be included in the plan and list adopted by a local government pursuant to ORS 223.309.

(5) Notwithstanding subsections (1) and (2) of this section, system development charge revenues may be expended on the costs of complying with the provisions of ORS 223.297 to 223.314, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures. [1989 c.449 §5; 1991 c.902 §29; 2003 c.765 §6; 2003 c.802 §22]

223.309 Preparation of plan for capital improvements financed by system development charges; modification.

(1) Prior to the establishment of a system development charge by ordinance or resolution, a local government shall prepare a capital improvement plan, public facilities plan, master plan or comparable plan that includes a list of the capital improvements that the local government intends to fund, in whole or in part, with revenues from an improvement fee and the estimated cost, timing and percentage of costs eligible to be funded with revenues from the improvement fee for each improvement.

(2) A local government that has prepared a plan and the list described in subsection (1) of this section may modify the plan and list at any time. If a system development charge will be increased by a proposed modification of the list to include a capacity increasing capital improvement, as described in ORS 223.307 (2):

> (a) The local government shall provide, at least 30 days prior to the adoption of the modification, notice of the proposed modification to the persons who have requested written notice under ORS 223.304 (6).
>
> (b) The local government shall hold a public hearing if the local government receives a written request for a hearing on the proposed modification within seven days of the date the proposed modification is scheduled for adoption.
>
> (c) Notwithstanding ORS 294.160, a public hearing is not required if the local government does not receive a written request for a hearing.

(d) The decision of a local government to increase the system development charge by modifying the list may be judicially reviewed only as provided in ORS 34.010 to 34.100. [1989 c.449 §6; 1991 c.902 §30; 2001 c.662 §4; 2003 c.765 §7a; 2003 c.802 §23]

Note: The amendments to 223.309 by section 7a, chapter 765, Oregon Laws 2003, become operative July 1, 2004. See section 10, chapter 765, Oregon Laws 2003, as amended by section 10a, chapter 765, Oregon Laws 2003. The text that is operative until July 1, 2004, including amendments by section 23, chapter 802, Oregon Laws 2003, is set forth for the user's convenience.

223.310 [Amended by 1957 c.397 §3; repealed by 1971 c.325 §1]

223.311 Deposit of system development charge revenues; annual accounting.

(1) System development charge revenues must be deposited in accounts designated for such moneys. The local government shall provide an annual accounting, to be completed by January 1 of each year, for system development charges showing the total amount of system development charge revenues collected for each system and the projects that were funded in the previous fiscal year.

(2) The local government shall include in the annual accounting:

(a) A list of the amount spent on each project funded, in whole or in part, with system development charge revenues; and

(b) The amount of revenue collected by the local government from system development charges and attributed to the costs of complying with the provisions of ORS 223.297 to 223.314, as described in ORS 223.307. [1989 c.449 §7; 1991 c.902 §31; 2001 c.662 §5; 2003 c.765 §8a; 2003 c.802 §24]

223.312 [1957 c.95 §4; repealed by 1971 c.325 §1]

223.313 Application of ORS 223.297 to 223.314.

(1) ORS 223.297 to 223.314 shall apply only to system development charges in effect on or after July 1, 1991.

(2) The provisions of ORS 223.297 to 223.314 shall not be applicable if they are construed to impair bond obligations for which system development charges have been pledged or to impair the ability of local governments to issue new bonds or other financing as provided by law for improvements allowed under ORS 223.297 to 223.314. [1989 c.449 §8; 1991 c.902 §32; 2003 c.802 §25]

223.314 Establishment or modification of system development charges not a land use decision.

The establishment, modification or implementation of a system development charge, or a plan or list adopted pursuant to ORS 223.309, or any modification of a plan or list, is not a land use decision pursuant to ORS chapters 195 and 197. [1989 c.449 §9; 2001 c.662 §6; 2003 c.765 §9]

School Development Tax

74th Oregon Legislative Assembly--2007 Regular Session
Enrolled Senate Bill 1036

SECTION 1.

(1) A local government or local service district, as defined in ORS 174.116, or a special government body, as defined in ORS 174.117, may not impose a tax on the privilege of constructing improvements to real property except as provided in sections 2 to 8 of this 2007 Act.

(2) Subsection (1) of this section does not apply to:

(a) A tax that is in effect as of May 1, 2007, or to the extension or continuation of such a tax, provided that the rate of tax does not increase from the rate in effect as of May 1, 2007;

(b) A tax on which a public hearing was held before May 1, 2007; or

(c) The amendment or increase of a tax adopted by a county for transportation purposes prior to May 1, 2007, provided that the proceeds of such a tax continue to be used for those purposes.

(3) For purposes of this section and sections 2 to 8 of this 2007 Act, construction taxes are limited to privilege taxes imposed under sections 2 to 8 of this 2007 Act and do not include any other financial obligations such as building permit fees, financial obligations that qualify as system development charges under ORS 223.297 to 223.314 or financial obligations imposed on the basis of factors such as income.

SECTION 2.

(1) Construction taxes may be imposed by a school district, as defined in ORS 330.005, in accordance with sections 2 to 8 of this 2007 Act.

(2) Notwithstanding subsection (1) of this section, construction taxes imposed by a school district may be collected by another local government, local service district or special government body pursuant to a written agreement with a school district.

SECTION 3.

Construction taxes may not be imposed on the following:

(1) Private school improvements.

(2) Public improvements as defined in ORS 279A.010.

(3) Residential housing that is guaranteed to be affordable, under guidelines established by the United States Department of Housing and Urban Development, to households that earn no more than 80 percent of the median household income for the area in which the construction tax is imposed, for a period of at least 60 years following the date of construction of the residential housing.

(4) Public or private hospital improvements.

(5) Improvements to religious facilities primarily used for worship or education associated with worship.

(6) Agricultural buildings, as defined in ORS 455.315(2)(a).

SECTION 4.

(1) Construction taxes imposed under sections 2 to 8 of this 2007 Act may be imposed only on improvements to real property that result in a new structure or additional square footage in an existing structure and may not exceed:

(a) $1 per square foot on structures or portions of structures intended for residential use, including but not limited to single-unit or multiple-unit housing; and

(b) $0.50 per square foot on structures or portions of structures intended for nonresidential use, not including multiple-unit housing of any kind.

(2) In addition to the limitations under subsection (1) of this section, a construction tax imposed on structures intended for nonresidential use may not exceed $25,000 per building permit or $25,000 per structure, whichever is less.

(3)(a) For years beginning on or after June 30, 2009, the limitations under subsections (1) and (2) of this section shall be adjusted for changes in construction costs by multiplying the limitations set forth in subsections (1) and (2) of this section by the ratio of the averaged monthly construction cost index for the 12-month period ending June 30 of the preceding calendar year over the averaged monthly construction cost index for the 12-month period ending June 30, 2008.

(b) The Department of Revenue shall determine the adjusted limitations under this section and shall report those limitations to entities imposing construction taxes. The department shall round the adjusted limitation under subsection (2) of this section to the nearest multiple of $100.

(c) As used in this subsection, 'construction cost index ' means the Engineering News-Record Construction Cost Index, or a similar nationally recognized index of construction costs as identified by the department by rule.

SECTION 5.

(1) A school district imposing a construction tax shall impose the tax by a resolution adopted by the district board of the school district. The resolution shall state the rates of tax, subject to section 4 of this 2007 Act.

(2) Prior to adopting a resolution under subsection (1) of this section, a school district shall enter into an intergovernmental agreement with each local government, local service district or special government body collecting the tax that establishes:

(a) Collection duties and responsibilities;

(b) The specific school district accounts into which construction tax revenues are to be deposited and the frequency of such deposits; and

(c) The amount of the administrative fee that the entity collecting the tax may retain to recoup its expenses in collecting the tax, not to exceed one percent of tax revenues.

SECTION 6.

(1) After deducting the costs of administering a construction tax and payment of refunds of such taxes, a school district shall use net revenues only for capital improvements.

(2) A construction tax may not be imposed under sections 2 to 8 of this 2007 Act unless the school district imposing the tax develops a long-term facilities plan for making capital improvements. The plan shall be adopted by resolution of the district board of the school district.

(3) As used in this section, 'capital improvements':

(a) Means:

(A) The acquisition of land;

(B) The construction, reconstruction or improvement of school facilities;

(C) The acquisition or installation of equipment, furnishings or other tangible property;

(D) The expenditure of funds for architectural, engineering, legal or similar costs related to capital improvements and any other expenditures for assets that have a useful life of more than one year; or

(E) The payment of obligations and related costs of issuance that are issued to finance or refinance capital improvements.

(b) Does not include operating costs or costs of routine maintenance.

SECTION 7.

A school district may pledge construction taxes to the payment of obligations issued to finance or refinance capital improvements as defined in section 6 of this 2007 Act.

SECTION 8.

Construction taxes shall be paid by the person undertaking the construction at the time that a permit authorizing the construction is issued.

SECTION 9.

Section 1 of this 2007 Act is repealed on January 2, 2018.

SECTION 10.

This 2007 Act takes effect on the 91st day after the date on which the regular session of the Seventy-fourth Legislative Assembly adjourns sine die. [effective date, September 27, 2007]

Pennsylvania Impact Fee Act

PENNSYLVANIA STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 1999 SUPPLEMENT (1998 SESSIONS) ***

TITLE 53. MUNICIPAL AND QUASI-MUNICIPAL CORPORATIONS-PENNSYLVANIA STATUTES
PART I. GENERAL MUNICIPAL LAW
CHAPTER 30. PLANNING AND DEVELOPMENT
ARTICLE V-A. MUNICIPAL CAPITAL IMPROVEMENT

53 P.S. § 10502-A (1999)

§ 10502-A. Definitions

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"ADJUSTED FOR FAMILY SIZE," adjusted in a manner which results in an income eligibility level which is lower for households with fewer than four people, or higher for households with more than four people, than the base income eligibility level determined as provided in the definition of low- to moderate-income persons based upon a formula as established by the rule of the agency.

"ADJUSTED GROSS INCOME," all wages, assets, regular cash or noncash contributions or gifts from persons outside the household, and such other resources and benefits as may be determined to be income by rule of the department, adjusted for family size, less deductions under section 62 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 62 et seq.).

"AFFORDABLE," with respect to the housing unit to be occupied by low- to moderate-income persons, monthly rents or monthly mortgage payments, including property taxes and insurance, that do not exceed 30% of that amount which represents 100% of the adjusted gross annual income for households within the metropolitan statistical area (MSA) or, if not within the MSA, within the county in which the housing unit is located, divided by 12.

"AGENCY," the Pennsylvania Housing Finance Agency as created pursuant to the act of December 3, 1959 (P.L. 1688, No. 621), known as the "Housing Finance Agency Law."

"DEPARTMENT," the Department of Community Affairs of the Commonwealth.

"EXISTING DEFICIENCIES," existing highways, roads or streets operating at a level of service below the preferred level of service designated by the municipality, as adopted in the transportation capital improvement plan.

"HIGHWAYS, ROADS OR STREETS," any highways, roads or streets identified on the legally adopted municipal street or highway plan or the official map which carry vehicular traffic, together with all necessary appurtenances, including bridges, rights-of-way and traffic control improvements. The term shall not include the interstate highway system.

"IMPACT FEE," a charge or fee imposed by a municipality against new development in order to generate revenue for funding the costs of transportation capital improvements necessitated by and attributable to new development.

"LOW- TO MODERATE-INCOME PERSONS," one or more natural persons or a family, the total annual adjusted gross household income of which is less than 100% of the median annual adjusted gross income for households in this Commonwealth or is less than 100% of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within the MSA, within the county in which the household is located, whichever is greater.

"NEW DEVELOPMENT," any commercial, industrial or residential or other project which involves new construction, enlargement, reconstruction, redevelopment, relocation or structural alteration and which is expected to generate additional vehicular traffic within the transportation service area of the municipality.

"OFFSITE IMPROVEMENTS," those public capital improvements which are not onsite improvements and that serve the needs of more than one development.

"ONSITE IMPROVEMENTS," all improvements constructed on the applicant's property, or the improvements constructed on the property abutting the applicant's property necessary for the ingress or egress to the applicant's property, and required to be constructed by the applicant pursuant to any municipal ordinance, including, but not limited to, the municipal building code, subdivision and land development ordinance, PRD regulations and zoning ordinance.

"PASS-THROUGH TRIP," a trip which has both an origin and a destination outside the service area.

"ROAD IMPROVEMENT," the construction, enlargement, expansion or improvement of public highways, roads or streets. It shall not include bicycle lanes, bus lanes, busways, pedestrian ways, rail lines or tollways.

"TRAFFIC OR TRANSPORTATION ENGINEER OR PLANNER," any person who is a registered professional engineer in this Commonwealth or is otherwise qualified by education and experience to perform traffic or transportation planning analyses of the type required in this act and who deals with the planning, geometric design and traffic operations of highways, roads and streets, their networks, terminals and abutting lands and relationships with other modes of transportation for the achievement of convenient, efficient and safe movement of goods and persons.

"TRANSPORTATION CAPITAL IMPROVEMENTS," those offsite road improvements that have a life expectancy of three or more years, not including costs for maintenance, operation or repair.

"TRANSPORTATION SERVICE AREA," a geographically defined portion of the municipality not to exceed seven square miles of area which, pursuant to the comprehensive plan and applicable district zoning regulations, has an aggregation of sites with development potential creating the need for transportation improvements within such area to be funded by impact fees. No area may be included in more than one transportation service area.

§ 10503-A. Grant of power

(a) The governing body of each municipality other than a county, in accordance with the conditions and procedures set forth in this act, may enact, amend and repeal impact fee ordinances and, thereafter, may establish, at the time of municipal approval of any new development or subdivision, the amount of an impact fee for any of the offsite public transportation capital improvements authorized by this act as a condition precedent to final plat approval under the municipality's subdivision and land development ordinance. Every ordinance adopted pursuant to this act shall include, but not be limited to, provisions for the following:

(1) The conditions and standards for the determination and imposition of impact fees consistent with the provisions of this act.

(2) The agency, body or office within the municipality which shall administer the collection, disbursement and accounting of impact fees.

(3) The time, method and procedure for the payment of impact fees.

(4) The procedure for issuance of any credit against or reimbursement of impact fees which an applicant may be entitled to receive consistent with the provisions of this act.

(5) Exemptions or credits which the municipality may choose to adopt. In this regard the municipality shall have the power to:

(i) Provide a credit of up to 100% of the applicable impact fees for all new development and growth which constitutes affordable housing to low- and moderate-income persons.

(ii) Provide a credit of up to 100% of the applicable impact fees for growth which are determined by the municipality to serve an overriding public interest.

(iii) Exempt de minimus applications from impact fee requirements. If such a policy is adopted, the definition of de minimus shall be contained in the ordinance.

(b) No municipality shall have the power to require as a condition for approval of a land development or subdivision application the construction, dedication or payment of any offsite improvements or capital expenditures of any nature whatsoever or impose any contribution in lieu thereof, exaction fee, or any connection, tapping or similar fee except as may be specifically authorized under this act.

(c) No municipality may levy an impact fee prior to the enactment of a municipal impact fee ordinance adopted in accordance with the procedures set forth in this act, except as may be specifically authorized by the provisions of this act. A transportation impact fee shall be imposed by a municipality within a service area or areas only where such fees have been determined and imposed pursuant to the standards, provisions and procedures set forth herein.

(d) Impact fees may be used for those costs incurred for improvements designated in the transportation capital improvement program which are attributable to new development, including the acquisition of land and rights-of-way; engineering, legal and planning costs; and all other costs which are directly related to road improvements within the service area or areas, including debt service. Impact fees shall not be imposed or used for costs associated with any of the following:

(1) Construction, acquisition or expansion of municipal facilities other than capital improvements identified in the transportation capital improvements plan required by this act.

(2) Repair, operation or maintenance of existing or new capital improvements.

(3) Upgrading, updating, expanding or replacing existing capital improvements to serve existing developments in order to meet stricter safety, efficiency, environmental or regulatory standards not attributable to new development.

(4) Upgrading, updating, expanding or replacing existing capital improvements to remedy deficiencies in service to existing development or fund deficiencies in existing municipal capital improvements resulting from a lack of adequate municipal funding over the years for maintenance or capital construction costs.

(5) Preparing and developing the land use assumptions, roadway sufficiency analysis and transportation capital improvement plan, except that impact fees may be used for no more than a proportionate amount of the cost of professional consultants incurred in preparing a roadway sufficiency analysis of infrastructure within a specified transportation service area, such allowable

proportion to be calculated by dividing the total costs of all road improvements in the adopted transportation capital improvement program within the transportation service area attributable to projected future development within the service area, as defined in section 504-A(e)(1)(iii), by the total costs of all road improvements in the adopted transportation capital improvement program within the specific transportation service area, as defined in section 504-A.

(e) Nothing in this act shall be deemed to alter or affect a municipality's existing power to require an applicant for municipal approval of any new development or subdivision from paying for the installation of onsite improvements as provided for in a municipality's subdivision and land development ordinance as authorized by this act.

(f) No municipality may delay or deny any application for building permit, certificate-of-occupancy, development or any other approval or permit required for construction, land development, subdivision or occupancy for the reason that any project of an approved capital improvement program has not been completed.

(g) A municipality which has enacted an impact fee ordinance on or before June 1, 1990, may for a period not to exceed one year from the effective date of this article, adopt an impact fee ordinance to conform with the standards and procedures set forth in this article. Where a fee previously imposed pursuant to an ordinance in effect on June 1, 1990, for transportation improvements authorized by this article is greater than the recalculated fee due under the newly adopted ordinance, the individual who paid the fee is entitled to a refund of the difference. If the recalculated fee is greater than the previously paid fee, there shall be no additional charge.

§ 10504-A. Transportation capital improvements plan

(a) A transportation capital improvements plan shall be prepared and adopted by the governing body of the municipality prior to the enactment of any impact fee ordinance. The municipality shall provide qualified professionals to assist the transportation impact fee advisory committee or the planning commission in the preparation of the transportation capital improvements plan and calculation of the impact fees to be imposed to implement the plan in accordance with the procedures, provisions and standards set forth in this act.

(b) (1) An impact fee advisory committee shall be created by resolution of a municipality intending to adopt a transportation impact fee ordinance. The resolution shall describe the geographical area or areas of the municipality for which the advisory committee shall develop the land use assumptions and conduct the roadway sufficiency analysis studies.

(2) The advisory committee shall consist of no fewer than 7 nor more than 15 members, all of whom shall serve without compensation. The governing body of the municipality shall appoint as members of the advisory committee persons who are either residents of the municipality or conduct business within the municipality and are not employees or officials of the municipality. Not less than 40% of the members of the advisory committee shall be representatives of the real estate, commercial and residential development, and building industries. The municipality may also appoint traffic or transportation engineers or planners to serve on the advisory committee provided the appointment is made after consultation with the advisory committee members. The traffic or transportation engineers or planners appointed to the advisory committee may not be employed by the municipality for the development of or consultation on the roadways sufficiency analysis which may lead to the adoption of the transportation capital improvements plan.

(3) The governing body of the municipality may elect to designate the municipal planning commission appointed pursuant to Article II as the impact fee advisory committee. If the existing planning commission does not include members representative of the real estate, commercial and residential development, and building industries at no less than 40% of the membership, the

governing body of the municipality shall appoint the sufficient number of representatives of the aforementioned industries who reside in the municipality or conduct business within the municipality to serve as ad hoc voting members of the planning commission whenever such commission functions as the impact fee advisory committee.

(4) No impact fee ordinance may be invalidated as a result of any legal action challenging the composition of the advisory committee which is not brought within 90 days following the first public meeting of said advisory committee.

(5) The advisory committee shall serve in an advisory capacity and shall have the following duties:

(i) To make recommendations with respect to land use assumptions, the development of comprehensive road improvements and impact fees.

(ii) To make recommendations to approve, disapprove or modify a capital improvement program by preparing a written report containing these recommendations to the municipality.

(iii) To monitor and evaluate the implementation of a capital improvement program and the assessment of impact fees, and report annually to the municipality with respect to the same.

(iv) To advise the municipality of the need to revise or update the land use assumptions, capital improvement program or impact fees.

(c) (1) As a prerequisite to the development of the transportation capital improvements plan, the advisory committee shall develop land use assumptions for the determination of future growth and development within the designated area or areas as described by the municipal resolution and recommend its findings to the governing body. Prior to the issuance and presentation of a written report to the municipality on the recommendations for proposed land use assumptions upon which to base the development of the transportation capital improvements plan, the advisory committee shall conduct a public hearing, following the providing of proper notice in accordance with section 107, for the consideration of the land use assumption proposals. Following receipt of the advisory committee report, which shall include the findings of the public hearing, the governing body of the municipality shall by resolution approve, disapprove or modify the land use assumptions recommended by the advisory committee.

(2) The land use assumptions report shall:

(i) Describe the existing land uses within the designated area or areas and the highways, roads or streets incorporated therein.

(ii) To the extent possible, reflect projected changes in land uses, densities of residential development, intensities of nonresidential development and population growth rates which may affect the level of traffic within the designated area or areas over a period of at least the next five years. These projections shall be based on an analysis of population growth rates during the prior five-year period, current zoning regulations, approved subdivision and land developments, and the future land use plan contained in the adopted municipal comprehensive plan. It may also refer to all professionally produced studies and reports pertaining to the municipality regarding such items as demographics, parks and recreation, economic development and any other study deemed appropriate by the municipality.

(3) If the municipality is located in a county which has created a county planning agency, the advisory committee shall forward a copy of their proposed land use assumptions to the county

planning agency for its comments at least 30 days prior to the public hearing. At the same time, the advisory committee shall also forward copies of the proposed assumptions to all contiguous municipalities and to the local school district for their review and comments.

(d) (1) Upon adoption of the land use assumptions by the municipality, the advisory committee shall prepare, or cause to be prepared, a roadway sufficiency analysis which shall establish the existing level of infrastructure sufficiency and preferred levels of service within any designated area or areas of the municipality as described by the resolution adopted pursuant to the creation of the advisory committee. The roadway sufficiency analysis shall be prepared for any highway, road or street within the designated area or areas on which the need for road improvements attributable to projected future new development is anticipated. The municipality shall commission a traffic or transportation engineer or planner to assist the advisory committee in the preparation of the roadway sufficiency analysis. It shall be deemed that the roads, streets and highways not on the roadway sufficiency analysis report are not impacted by future development. The roadway sufficiency analysis shall include the following components:

(i) The establishment of existing volumes of traffic and existing levels of service.

(ii) The identification of a preferred level of service established pursuant to the following:

(A) The level of service shall be one of the categories of road service as defined by the Transportation Research Board of the National Academy of Sciences or the Institute of Transportation Engineers. The municipality may choose to select a level of service on a transportation service area basis as the preferred level of service. The preferred levels of service shall be designated by the governing body of the municipality following determination of the existing level of service as established by the roadway sufficiency analysis. If the preferred level of service is designated as greater than the existing level of service, the municipality shall be required to identify road improvements needed to correct the existing deficiencies.

(B) Following adoption of the preferred level of service, such level of service may be waived for a particular road segment or intersection if the municipality finds that one or more of the following effectively precludes provision of road improvements necessary to meet the level of service: geometric design limitations, topographic limitations or the unavailability of necessary right-of-way.

(iii) The identification of existing deficiencies which need to be remedied to accommodate existing traffic at the preferred level of service.

(iv) The specification of the required road improvements needed to bring the existing level of service to the preferred level of service.

(v) A projection of anticipated traffic volumes, with a separate determination of pass-through trips, for a period of not less than five years from the date of the preparation of the roadway sufficiency analysis based upon the land use assumptions adopted under this section.

(vi) The identification of forecasted deficiencies which will be created by "pass-through" trips.

(2) The advisory committee shall provide the governing body with the findings of the roadway sufficiency analysis. Following receipt of the advisory committee report, the governing body shall by resolution approve, disapprove or modify the roadway sufficiency analysis recommended by the advisory committee.

(e) (1) Utilizing the information provided by the land use assumption and the roadway sufficiency analysis as the basis for determination of the need for road improvements to remedy existing deficiencies and accommodate future projected traffic volumes, the advisory committee shall identify those capital projects which the municipality should consider for adoption in its transportation capital improvements plan and shall recommend the delineation of the transportation service area or areas. The capital improvement plan shall be developed in accordance with generally accepted engineering and planning practices. The capital improvement program shall include projections of all designated road improvements in the capital improvement program. The total cost of the road improvements shall be based upon estimated costs, using standard traffic engineering standards, with a 10% maximum contingency which may be added to said estimate. These costs shall include improvements to correct existing deficiencies with identified anticipated sources of funding and timetables for implementation. The transportation capital improvements plan shall include the following components:

(i) A description of the existing highways, roads and streets within the transportation service area and the road improvements required to update, improve, expand or replace such highways, roads and streets in order to meet the preferred level of service and usage and stricter safety, efficiency, environmental or regulatory standards not attributable to new development.

(ii) A plan specifying the road improvements within the transportation service area attributable to forecasted pass-through traffic so as to maintain the preferred level of service after existing deficiencies identified by the roadway sufficiency analysis have been remedied.

(iii) A plan specifying the road improvements or portions thereof within the transportation service area attributable to the projected future development, consistent with the adopted land use assumptions, in order to maintain the preferred level of service after accommodation for pass-through traffic and after existing deficiencies identified in the roadway sufficiency analysis have been remedied.

(iv) The projected costs of the road improvements to be included in the transportation capital improvements plan, calculating separately for each project by the following categories:

(A) The costs or portion thereof associated with correcting existing deficiencies as specified in subparagraph (i).

(B) The costs or portions thereof attributable to providing road improvements to accommodate forecasted pass-through trips as specified in subparagraph (ii).

(C) The costs of providing necessary road improvements or portions thereof attributable to projected future development as specified in subparagraph (iii).

(v) A projected timetable and proposed budget for constructing each road improvement contained in the plan.

(vi) The proposed source of funding for each capital improvement included in the road plan. This shall include anticipated revenue from the Federal Government, State government, municipality, impact fees and any other source. The estimated revenue for each capital improvement in the plan which is to be provided by impact fees shall be identified separately for each project.

(2) The source of funding required for projects to remedy existing deficiencies as set forth in paragraph (1)(i) and the road improvements attributable to forecasted pass-through traffic as set

forth in paragraph (1)(ii) shall be exclusive of funds generated from the assessment of impact fees. Those improvements set forth in paragraph (1)(iii) to any highway, road or street which qualifies as a State highway or a portion of the rural State highway system as provided in section 102 of the act of June 1, 1945 (P.L. 1242, No. 428), known as the "State Highway Law," may be funded from impact fees in an amount not to exceed 50% of the total cost of such improvements.

(3) Upon the completion of the transportation capital improvements plan and prior to its adoption by the governing body of the municipality and the enactment of a municipal impact fee ordinance, the advisory committee shall hold at least one public hearing for consideration of the plan. Notification of the public hearing shall comply with the requirement of section 107. The plan shall be available for public inspection at least ten working days prior to the date of the public hearing. After presentation of the recommendation by the advisory committee or its representatives at a public meeting of the governing body, the governing body may make such changes to the plan prior to its adoption as the governing body deems appropriate following review of the public comments made at the public hearing.

(4) The governing body may periodically request the impact fee advisory committee to review the capital improvements plan and impact fee charges and make recommendations for revisions for subsequent consideration and adoption by the governing body based only on the following:

(i) New subsequent development which has occurred in the municipality.

(ii) Capital improvements contained in the capital improvements plan, the construction of which has been completed.

(iii) Unavoidable delays beyond the responsibility or control of the municipality in the construction of capital improvements contained in the plan.

(iv) Significant changes in the land use assumptions.

(v) Significant changes in the estimated costs of the proposed transportation capital improvements.

(vi) Significant changes in the projected revenue from all sources listed needed for the construction of the transportation capital improvements.

(f) Any improvements to Federal-aid or State highways to be funded in part by impact fees shall require the approval of the Department of Transportation and, if necessary, the United States Department of Transportation. Nothing in this act shall be deemed to alter or diminish the powers, duties or jurisdiction of the Department of Transportation with respect to State highways or the rural State highway system.

§ 10505-A. Establishment and administration of impact fees

(a) (1) The impact fee for transportation capital improvements shall be based upon the total costs of the road improvements included in the adopted capital improvement plan within a given transportation service area attributable to and necessitated by new development within the service area as defined pursuant to section 504-A(e)(1)(iii), divided by the number of anticipated peak hour trips generated by all new development consistent with the adopted land use assumptions and calculated in accordance with the Trip Generation Manual published by the Institute of Transportation Engineers, fourth or subsequent edition as adopted by the municipality by ordinance or resolution to equal a per trip cost for transportation improvements within the service area.

(2) The specific impact fee for a specific new development or subdivision within the service area for road improvements shall be determined as of the date of preliminary land development or

subdivision approval by multiplying the per trip cost established for the service area as determined in section 503-A(a) by the estimated number of trips to be generated by the new development or subdivision using generally accepted traffic engineering standards.

(3) A municipality may authorize or require the preparation of a special transportation study in order to determine traffic generation or circulation for a new nonresidential development to assist in the determination of the amount of the transportation fee for such development or subdivision. The municipality shall set forth by ordinance the circumstances in which such a study should be authorized or required, provided however, that no special transportation study shall be required when there is no deviation from the land use assumptions resulting in increased density, intensity or trip generation by a particular development. A developer may, however, at any time, voluntarily prepare and submit a traffic study for a proposed development or may have such a study prepared at its expense after the development is completed to include actual trips generated by the development for use in any appeal as provided for under this act. The special transportation study shall be prepared by a qualified traffic or transportation engineer using procedures and methods established by the municipality based on generally accepted transportation planning and engineering standards. The study, where required by the municipality, shall be submitted prior to the imposition of an impact fee and shall be taken into consideration by the municipality in increasing or reducing the amount of the impact fee for the new development for the amount shown on the impact fee schedule adopted by the municipality.

(b) The governing body shall enact an impact ordinance setting forth a description of the boundaries and a fee schedule for each transportation service area. At least ten working days prior to the adoption of the ordinance at a public meeting, the ordinance shall be available for public inspection. The impact fee ordinance shall include, but not be limited to, those provisions set forth in section 503-A(a) and conform with the standards, provisions and procedures set forth in this act.

(c) (1) A municipality may give notice of its intention to adopt an impact fee ordinance by publishing a statement of such intention twice in one newspaper of general circulation in the municipality. The first publication shall not occur before the adoption of the resolution by which the municipality establishes its impact fee advisory committee. The second publication shall occur not less than one nor more than three weeks thereafter.

(2) A municipal impact fee ordinance adopted under and pursuant to this act may provide that the provisions of the ordinance may have retroactive application, for a period not to exceed 18 months after the adoption of the resolution creating an impact fee advisory committee pursuant to section 504-A(b)(1), to preliminary or tentative applications for land development, subdivision or PRD with the municipality on or after the first publication of the municipality's intention to adopt an impact fee ordinance; provided, however, that the impact fee imposed on building permits for construction of new development approved pursuant to such applications filed during the period of pendency shall not exceed $ 1,000 per anticipated peak hour trip as calculated in accordance with the generally accepted traffic engineering standards as set forth under the provisions of subsection (a)(1) or the subsequently adopted fee established by the ordinance, whichever is less.

(3) No action upon an application for land development, subdivision or PRD shall be postponed, delayed or extended by the municipality because adoption of a municipal impact fee ordinance is being considered. Furthermore, the adoption of an impact fee ordinance more than 18 months after adoption of a resolution creating the impact fee advisory committee shall not be retroactive or applicable to plats submitted for preliminary or tentative approval prior to the legal publication of the proposed impact fee ordinance and any fees collected pursuant to this subsection shall be refunded to the payor of such fees; provided the adoption of the impact fee ordinance was not delayed due to the initiation of any litigation challenging the adoption of such ordinance.

(d) Any impact fees collected by a municipality pursuant to a municipal ordinance shall be deposited by the municipality into an interest-bearing fund account designated solely for impact fees, clearly identifying the transportation service area from which the fee was received. Funds collected in one transportation service area must be accounted for and expended within that transportation service area, and such funds shall only be expended for that portion of the transportation capital improvements identified as being funded by impact fees under the transportation capital improvements plan. All interest earned on such funds shall become funds of that account. The municipality shall provide that an accounting be made annually for any fund account containing impact fee proceeds and earned interest. Such accounting shall include, but not be limited to, the total funds collected, the source of the funds collected, the total amount of interest accruing on such funds and the amount of funds expended on specific transportation improvements. Notice of the availability of the results of the accounting shall be included and published as part of the annual audit required of municipalities. A copy of the report shall also be provided to the advisory committee.

(e) All transportation impact fees imposed under the terms of this act shall be payable at the time of the issuance of building permits for the applicable new development or subdivision. The municipality may not require the applicant to provide a guarantee of financial security for the payment of any transportation impact fees, except the municipality may provide for the deposit with the municipality of financial security in an amount sufficient to cover the cost of the construction of any road improvement contained in the transportation capital improvement plan which is performed by the applicant.

(f) An applicant shall be entitled to a credit against the impact fee in the amount of the fair market value of any land dedicated by the applicant to the municipality for future right-of-way, realignment or widening of any existing roadways or for the value of any construction of road improvements contained in the transportation capital improvement program which is performed at the applicant's expense. The amount of such credit for any capital improvement constructed shall be the amount allocated in the capital improvement program, including contingency factors, for such work. The fair market value of any land dedicated by the applicant shall be determined as of the date of the submission of the land development or subdivision application to the municipality.

(g) Impact fees previously collected by a municipality shall be refunded, together with earned accrued interest thereon, to the payor of such fees from the date of payment under any of the following circumstances:

> (1) In the event that a municipality terminates or completes an adopted capital improvements plan for a transportation service area and there remains at the time of termination or completion undispersed funds in the accounts established for that purpose, the municipality shall provide written notice by certified mail to those persons who previously paid the fees which remain undispersed of the availability of said funds for refund of the person's proportionate share of the fund balance. The allocation of the refund shall be determined by generally accepted accounting practices. In the event that any of the funds remain unclaimed following one year after the notice, which notice shall be provided to the last known address provided by the payor of the fees to the municipality, the municipality shall be authorized to transfer any funds so remaining to any other fund in the municipality without any further obligation to refund said funds.
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> (2) If the municipality fails to commence construction of any transportation service area road improvements within three years of the scheduled construction date set forth in the transportation capital improvements plan, any person who paid any impact fees pursuant to that transportation capital improvements plan shall, upon written request to the municipality, receive a refund of that portion of the fee attributable to the contribution for the uncommenced road improvement, plus the interest accumulated thereon from the date of payment.
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> (3) If, upon completion of any road improvements project, the actual expenditures of the capital project are less than 95% of the costs properly allocable to the fee paid within the transportation service area in which the completed road improvement was adopted, the municipality shall refund

the pro rata difference between the budgeted costs and the actual expenditures, including interest accumulated thereon from the date of payment, to the person or persons who paid the impact fees for such improvements.

(4) If the new development for which transportation impact fees were paid is not commenced prior to the expiration of building permits issued for the new development within the time limits established by applicable building codes within the municipality or if the building permit as issued for the new development is altered and the alteration results in a decrease in the amount of the impact fee due in accordance with the calculations set forth in subsection (a)(1).

§ 10506-A. Appeals

(a) Any person required to pay an impact fee shall have the right to contest the land use assumptions, the development and implementation of the transportation capital improvement program, the imposition of impact fees, the periodic updating of the transportation capital improvement program, the refund of impact fees and all other matters relating to impact fees, including the constitutionality or validity of the impact fee ordinance by filing an appeal with the court of common pleas.

(b) A master may be appointed by the court to hear testimony on the issues and return the record and a transcript of the testimony, together with a report and recommendations, or the court may appoint a master to hold a nonrecord hearing and to make recommendations and return the same to the court, in which case either party may demand a hearing de novo before the court.

(c) Any cost incurred by parties in such an appeal shall be the separate responsibility of the parties.

§ 10507-A. Prerequisites for assessing sewer and water tap-in fees

(a) No municipality may charge any tap-in connection or other similar fee as a condition of connection to a municipally owned sewer or water system unless such fee is calculated as provided in the applicable provisions of the act of May 2, 1945, (P.L. 382, No. 164), known as the "Municipality Authorities Act of 1945."

(b) Where a municipally owned water or sewer system is to be extended at the expense of the owner or owners of properties or where the municipality otherwise would construct the connection end or customer facilities services (other than water meter installation), the property owner or owners shall have the right to construct such extension or make such connection and install such customer facilities himself or themselves or through a subcontractor in accordance with the "Municipality Authorities Act of 1945."

(c) Where a property owner or owners construct or cause to be constructed any addition, expansion or extension to or of a sewer or water system of a municipality whereby such addition, expansion or extension provides future excess capacity to accommodate future development upon the lands of others, the municipality shall provide for the reimbursement to the property owner or owners in accordance with the provisions of the "Municipality Authorities Act of 1945."

Rhode Island Development Impact Fee Act

[downloaded March 19, 2012]

TITLE 45: Towns and cities
CHAPTER 45-22.4: Rhode Island Development Impact Fee Act

§§ 45-22.4-1 Title.

Chapter 22.4 of this title shall be known as the "Rhode Island Development Impact Fee Act".

§§ 45-22.4-2 Legislative findings and intent.

(a) Whereas, the General Assembly finds that an equitable program is needed for the planning and financing of public facilities to serve new growth and development in the cities and towns in order to protect the public health, safety and general welfare of the citizens of this state.

(b) Whereas, it is therefore the public policy of the state and in the public interest that cities and towns are authorized to assess, impose, levy and collect fees defined herein as impact fees for all new development within their jurisdictional limits.

(c) Whereas, it is the intent of the General Assembly by enactment of this act to:

(1) Ensure that adequate public facilities are available to serve new growth and development;

(2) Ensure that new growth and development does not place an undue financial burden upon existing taxpayers;

(3) Promote orderly growth and development by establishing uniform standards for local governments to require that those who benefit from new growth and development pay a proportionate fair share of the cost of new and/or upgraded public facilities needed to serve that new growth and development;

(4) Establish standards for the adoption of development impact fee ordinances by governmental entities;

(5) Empower governmental entities which are authorized to adopt ordinances to impose development impact fees.

§§ 45-22.4-3 Definitions.

As used in this chapter, the following words have the meanings stated in this section:

(1) "Capital improvements" means improvements with a useful life of ten (10) years or more, which increases or improves the service capacity of a public facility;

(2) "Capital improvement program" means that component of a municipal budget that sets out the need for public facility capital improvements, the costs of the improvements, and proposed funding sources. A capital improvement program must cover at least a five (5) year period and should be reviewed at least every five (5) years;

(3) "Developer" means a person or legal entity undertaking development;

(4) "Governmental entity" means a unit of local government;

(5) "Impact fee" means the charge imposed upon new development by a governmental entity to fund all or a portion of the public facility's capital improvements affected by the new development from which it is collected;

(6) "Proportionate share" means that portion of the cost of system improvements which reasonably relates to the service demands and needs of the project; and

(7) "Public facilities" means:

(i) Water supply production, treatment, storage, and distribution facilities;

(ii) Wastewater and solid waste collection, treatment, and disposal facilities;

(iii) Roads, streets, and bridges, including rights-of-way, traffic signals, landscaping, and local components of state and federal highways;

(iv) Storm water collection, retention, detention, treatment, and disposal facilities, flood control facilities, bank and shore projections, and enhancement improvements;
(v) Parks, open space areas, and recreation facilities;

(vi) Police, emergency medical, rescue, and fire protection facilities;

(vii) Public schools and libraries; and

(viii) Other public facilities consistent with a community's capital improvement program.

§§ 45-22.4-4 Calculation of impact fees.

(a) The governmental entity considering the adoption of impact fees shall conduct a needs assessment for the type of public facility or public facilities for which impact fees are to be levied. The needs assessment shall identify levels of service standards, projected public facilities capital improvements needs, and distinguish existing needs and deficiencies from future needs. The findings of this document shall be adopted by the local governmental entity.

(b) The data sources and methodology upon which needs assessments and impact fees are based shall be made available to the public upon request.

(c) The amount of each impact fee imposed shall be based upon actual cost of public facility expansion or improvements, or reasonable estimates of the cost, to be incurred by the governmental entity as a result of new development. The calculation of each impact fee shall be in accordance with generally accepted accounting principles.

(d) An impact fee shall meet the following requirements:

(1) The amount of the fee must be reasonably related to or reasonably attributable to the development's share of the cost of infrastructure improvements made necessary by the development; and

(2) The impact fees imposed must not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in accommodating the development. The following factors shall be considered in determining a proportionate share of public facilities capital improvement costs:

(i) The need for public facilities' capital improvements required to serve new development, based on a capital improvements program that shows deficiencies in capital facilities serving existing development, and the means, other than impact fees, by which any existing deficiencies will be eliminated within a reasonable period of time, and that shows additional demands anticipated to be placed on specified capital facilities by new development; and

(ii) The extent to which new development is required to contribute to the cost of system improvements in the future.

§§ 45-22.4-5 Collection and expenditure of impact fees.

(a) The collection and expenditure of impact fees must be reasonably related to the benefits accruing to the development paying the fees. The ordinance may consider the following requirements:

(1) Upon collection, impact fees must be deposited in a special proprietary fund, which shall be invested with all interest accruing to the trust fund;

(2) Within eight (8) years of the date of collection, impact fees shall be expended or encumbered for the construction of public facilities' capital improvements of reasonable benefit to the development paying the fees and that are consistent with the capital improvement program;

(3) Where the expenditure or encumbrance of fees is not feasible within eight (8) years, the governmental entity may retain impact fees for a longer period of time if there are compelling reasons for the longer period. In no case shall impact fees be retained longer than twelve (12) years.

(b) All impact fees imposed pursuant to the authority granted in this chapter shall be assessed upon the issuance of a building permit or other appropriate permission to proceed with development and collected in full upon to the issuance of certificate of occupancy or other final action authorizing the intended use of a structure.

(c) A governmental entity may recoup costs of excess capacity in existing capital facilities, where the excess capacity has been provided in anticipation of the needs of new development, by requiring impact fees for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been documented by a preconstruction assessment that demonstrated the need for the excess capacity. Nothing contained in this chapter shall prevent a municipality from continuing to assess an impact fee that recoups costs for excess capacity in an existing facility without the preconstruction assessment so long as the impact fee was enacted at least ninety (90) days prior to July 22, 2000 and is in compliance with this chapter in all other respects pursuant to §§ 45-22.4-7. The fees imposed to recoup the costs to provide the excess capacity must be based on the governmental entity's actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity. That portion of an impact fee deemed recoupment is exempted from provisions of §§ 45-22.4-5(a)(2).

(d) Governmental entities may accept the dedication of land or the construction of public facilities in lieu of payment of impact fees provided that:

(1) The need for the dedication or construction is clearly documented in the community's capital improvement program or comprehensive plan;

(2) The land proposed for dedication for the facilities to be constructed are determined to be appropriate for the proposed use by the local governmental entity;

(3) Formulas and/or procedures for determining the worth of proposed dedications or constructions are established.

(e) Exemptions: Impact fees shall not be imposed for remodeling, rehabilitation, or other improvements to an existing structure, or rebuilding a damaged structure, unless there is an increase in the number of dwelling units or any other measurable unit for which an impact fee is collected. Impact fees may be imposed when property which is owned or controlled by federal or state government is converted to private ownership or control.

> (1) Impact fees shall not be imposed for remodeling, rehabilitation, or other improvements to an existing structure, or rebuilding a damaged structure, unless there is an increase in the number of dwelling units or any other measurable unit for which an impact fee is collected. Impact fees may be imposed when property which is owned or controlled by federal or state government is converted to private ownership or control.
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> (2) Nothing in this chapter shall prevent a municipality from granting any exemption(s) which it deems appropriate.

§§ 45-22.4-6 Refund of impact fees.

(a) If impact fees are not expended or encumbered within the period established in §§ 45-22.4-5, the governmental entity shall refund to the fee payer or his or her successors the amount of the fee paid and accrued interest. The governmental entity shall send the refund to the fee payer at the last known address by certified mail within one year of the date on which the right to claim refund arises. All refunds due and not claimed within one year shall be retained by the municipality.

(b) When a governmental entity seeks to terminate any or all impact fee requirements, all unexpended or unencumbered funds shall be refunded as provided above. Upon the finding that any or all fee requirements are to be terminated, the governmental entity shall place a notice of termination and availability of refunds in a newspaper of general circulation in the community at least two (2) times. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds may be transferred to the general fund and used for any public purpose. A governmental entity is released from this notice requirement if there are no unexpended or unencumbered balances within a fund or funds being terminated.

§§ 45-22.4-7 Compliance.

No later than two (2) years after July 22, 2000, governmental entities shall conform all impact fee ordinances existing on July 22, 2000 to the provisions of this chapter.

§§ 45-22.4-8 Adoption of impact fees.

Impact fees shall be adopted by ordinance and the adoption of an impact fee ordinance or amendment to that ordinance shall be by affirmative vote of not less than a majority of the total membership of the governing body in attendance at the meeting, in the manner prescribed by law.

§§ 45-22.4-9 Severablility.

If any portion of this chapter or any rule, regulation, or determination made under this chapter, or the application of this chapter to any person, agency, or circumstances, is held invalid by a court of competent jurisdiction, the remainder of this chapter, rule, regulation, or determination and the application of those provisions to other persons, agencies, or circumstances shall not be affected. The invalidity of any section or sections, or parts of any section or sections of this chapter, shall not affect the validity of the remainder of this chapter.

South Carolina Development Impact Fee Act

[downloaded from state website, December 13, 2017
http://www.scstatehouse.gov/code/statmast.php]

Title 6 - Local Government - Provisions Applicable to Special Purpose Districts and Other Political Subdivisions

CHAPTER 1. GENERAL PROVISIONS

ARTICLE 9. DEVELOPMENT IMPACT FEES

SECTION 6-1-910. Short title.
This article may be cited as the "South Carolina Development Impact Fee Act".

SECTION 6-1-920. Definitions.
As used in this article:

(1) "Affordable housing" means housing affordable to families whose incomes do not exceed eighty percent of the median income for the service area or areas within the jurisdiction of the governmental entity.

(2) "Capital improvements" means improvements with a useful life of five years or more, by new construction or other action, which increase or increased the service capacity of a public facility.

(3) "Capital improvements plan" means a plan that identifies capital improvements for which development impact fees may be used as a funding source.

(4) "Connection charges" and "hookup charges" mean charges for the actual cost of connecting a property to a public water or public sewer system, limited to labor and materials involved in making pipe connections, installation of water meters, and other actual costs.

(5) "Developer" means an individual or corporation, partnership, or other entity undertaking development.

(6) "Development" means construction or installation of a new building or structure, or a change in use of a building or structure, any of which creates additional demand and need for public facilities. A building or structure shall include, but not be limited to, modular buildings and manufactured housing. "Development" does not include alterations made to existing single-family homes.

(7) "Development approval" means a document from a governmental entity which authorizes the commencement of a development.

(8) "Development impact fee" or "impact fee" means a payment of money imposed as a condition of development approval to pay a proportionate share of the cost of system improvements needed to serve the people utilizing the improvements. The term does not include:

(a) a charge or fee to pay the administrative, plan review, or inspection costs associated with permits required for development;

(b) connection or hookup charges;

(c) amounts collected from a developer in a transaction in which the governmental entity has incurred expenses in constructing capital improvements for the development if the owner or

developer has agreed to be financially responsible for the construction or installation of the capital improvements;

(d) fees authorized by Article 3 of this chapter.

(9) "Development permit" means a permit issued for construction on or development of land when no subsequent building permit issued pursuant to Chapter 9 of Title 6 is required.

(10) "Fee payor" means the individual or legal entity that pays or is required to pay a development impact fee.

(11) "Governmental entity" means a county, as provided in Chapter 9, Title 4, and a municipality, as defined in Section 5-1-20.

(12) "Incidental benefits" are benefits which accrue to a property as a secondary result or as a minor consequence of the provision of public facilities to another property.

(13) "Land use assumptions" means a description of the service area and projections of land uses, densities, intensities, and population in the service area over at least a ten-year period.

(14) "Level of service" means a measure of the relationship between service capacity and service demand for public facilities.

(15) "Local planning commission" means the entity created pursuant to Article 1, Chapter 29, Title 6.

(16) "Project" means a particular development on an identified parcel of land.

(17) "Proportionate share" means that portion of the cost of system improvements determined pursuant to Section 6-1-990 which reasonably relates to the service demands and needs of the project.

(18) "Public facilities" means:

(a) water supply production, treatment, laboratory, engineering, administration, storage, and transmission facilities;

(b) wastewater collection, treatment, laboratory, engineering, administration, and disposal facilities;

(c) solid waste and recycling collection, treatment, and disposal facilities;

(d) roads, streets, and bridges including, but not limited to, rights-of-way and traffic signals;

(e) storm water transmission, retention, detention, treatment, and disposal facilities and flood control facilities;

(f) public safety facilities, including law enforcement, fire, emergency medical and rescue, and street lighting facilities;

(g) capital equipment and vehicles, with an individual unit purchase price of not less than one hundred thousand dollars including, but not limited to, equipment and vehicles used in the delivery of public safety services, emergency preparedness services, collection and disposal of solid waste, and storm water management and control;

(h) parks, libraries, and recreational facilities;

(i) public education facilities for grades K-12 including, but not limited to, schools, offices, classrooms, parking areas, playgrounds, libraries, cafeterias, gymnasiums, health and music rooms, computer and science laboratories, and other facilities considered necessary for the proper public education of the state's children. [added by 2016 Act No. 229]

(19) "Service area" means, based on sound planning or engineering principles, or both, a defined geographic area in which specific public facilities provide service to development within the area defined. Provided, however, that no provision in this article may be interpreted to alter, enlarge, or reduce the service area or boundaries of a political subdivision which is authorized or set by law.

(20) "Service unit" means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements.

(21) "System improvements" means capital improvements to public facilities which are designed to provide service to a service area.

(22) "System improvement costs" means costs incurred for construction or reconstruction of system improvements, including design, acquisition, engineering, and other costs attributable to the improvements, and also including the costs of providing additional public facilities needed to serve new growth and development. System improvement costs do not include:

(a) construction, acquisition, or expansion of public facilities other than capital improvements identified in the capital improvements plan;

(b) repair, operation, or maintenance of existing or new capital improvements;

(c) upgrading, updating, expanding, or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental, or regulatory standards;

(d) upgrading, updating, expanding, or replacing existing capital improvements to provide better service to existing development;

(e) administrative and operating costs of the governmental entity; or

(f) principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the governmental entity to finance capital improvements identified in the capital improvements plan.

SECTION 6-1-930. Developmental impact fee.

(A) (1) Only a governmental entity that has a comprehensive plan, as provided in Chapter 29 of this title, and which complies with the requirements of this article may impose a development impact fee. If a governmental entity has not adopted a comprehensive plan, but has adopted a capital improvements plan which substantially complies with the requirements of Section 6-1-960(B), then it may impose a development impact fee. A governmental entity may not impose an impact fee, regardless of how it is designated, except as provided in this article. However, a special purpose district or public service district which (a) provides fire protection services or recreation services, (b) was created by act of the General Assembly prior to 1973, and (c) had the power to impose development impact fees prior to the effective date of this section is not prohibited from imposing development impact fees.

(2) Before imposing a development impact fee on residential units, a governmental entity shall prepare a report which estimates the effect of recovering capital costs through impact fees on the availability of affordable housing within the political jurisdiction of the governmental entity.

(B) (1) An impact fee may be imposed and collected by the governmental entity only upon the passage of an ordinance approved by a positive majority, as defined in Article 3 of this chapter.

(2) The amount of the development impact fee must be based on actual improvement costs or reasonable estimates of the costs, supported by sound engineering studies.

(3) An ordinance authorizing the imposition of a development impact fee must:

(a) establish a procedure for timely processing of applications for determinations by the governmental entity of development impact fees applicable to all property subject to impact fees and for the timely processing of applications for individual assessment of development impact fees, credits, or reimbursements allowed or paid under this article;

(b) include a description of acceptable levels of service for system improvements; and

(c) provide for the termination of the impact fee.

(C) A governmental entity shall prepare and publish an annual report describing the amount of all impact fees collected, appropriated, or spent during the preceding year by category of public facility and service area.

(D) Payment of an impact fee may result in an incidental benefit to property owners or developers within the service area other than the fee payor, except that an impact fee that results in benefits to property owners or developers within the service area, other than the fee payor, in an amount which is greater than incidental benefits is prohibited.

SECTION 6-1-940. Amount of impact fee.

A governmental entity imposing an impact fee must provide in the impact fee ordinance the amount of impact fee due for each unit of development in a project for which an individual building permit or certificate of occupancy is issued. The governmental entity is bound by the amount of impact fee specified in the ordinance and may not charge higher or additional impact fees for the same purpose unless the number of service units increases or the scope of the development changes and the amount of additional impact fees is limited to the amount attributable to the additional service units or change in scope of the development. The impact fee ordinance must:

(1) include an explanation of the calculation of the impact fee, including an explanation of the factors considered pursuant to this article;

(2) specify the system improvements for which the impact fee is intended to be used;

(3) inform the developer that he may pay a project's proportionate share of system improvement costs by payment of impact fees according to the fee schedule as full and complete payment of the developer's proportionate share of system improvements costs;

(4) inform the fee payor that:

(a) he may negotiate and contract for facilities or services with the governmental entity in lieu of the development impact fee as defined in Section 6-1-1050;

(b) he has the right of appeal, as provided in Section 6-1-1030;

(c) the impact fee must be paid no earlier than the time of issuance of the building permit or issuance of a development permit if no building permit is required.

SECTION 6-1-950. Procedure for adoption of ordinance imposing impact fees.

(A) The governing body of a governmental entity begins the process for adoption of an ordinance imposing an impact fee by enacting a resolution directing the local planning commission to conduct the studies and to recommend an impact fee ordinance, developed in accordance with the requirements of this article. Under no circumstances may the governing body of a governmental entity impose an impact fee for any public facility which has been paid for entirely by the developer.

(B) Upon receipt of the resolution enacted pursuant to subsection (A), the local planning commission shall develop, within the time designated in the resolution, and make recommendations to the governmental entity for a capital improvements plan and impact fees by service unit. The local planning commission shall prepare and adopt its recommendations in the same manner and using the same procedures as those used for developing recommendations for a comprehensive plan as provided in Article 3, Chapter 29, Title 6, except as otherwise provided in this article. The commission shall review and update the capital improvements plan and impact fees in the same manner and on the same review cycle as the governmental entity's comprehensive plan or elements of it.

SECTION 6-1-960. Recommended capital improvements plan; notice; contents of plan.

(A) The local planning commission shall recommend to the governmental entity a capital improvements plan which may be adopted by the governmental entity by ordinance. The recommendations of the commission are not binding on the governmental entity, which may amend or alter the plan. After reasonable public notice, a public hearing must be held before final action to adopt the ordinance approving the capital improvements plan. The notice must be published not less than thirty days before the time of the hearing in at least one newspaper of general circulation in the county. The notice must advise the public of the time and place of the hearing, that a copy of the capital improvements plan is available for public inspection in the offices of the governmental entity, and that members of the public will be given an opportunity to be heard.

(B) The capital improvements plan must contain:

> (1) a general description of all existing public facilities, and their existing deficiencies, within the service area or areas of the governmental entity, a reasonable estimate of all costs, and a plan to develop the funding resources, including existing sources of revenues, related to curing the existing deficiencies including, but not limited to, the upgrading, updating, improving, expanding, or replacing of these facilities to meet existing needs and usage;
>
> (2) an analysis of the total capacity, the level of current usage, and commitments for usage of capacity of existing public facilities, which must be prepared by a qualified professional using generally accepted principles and professional standards;
>
> (3) a description of the land use assumptions;
>
> (4) a definitive table establishing the specific service unit for each category of system improvements and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial, agricultural, and industrial, as appropriate;
>
> (5) a description of all system improvements and their costs necessitated by and attributable to new development in the service area, based on the approved land use assumptions, to provide a level of service not to exceed the level of service currently existing in the community or service area, unless a different or higher level of service is required by law, court order, or safety consideration;

(6) the total number of service units necessitated by and attributable to new development within the service area based on the land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;

(7) the projected demand for system improvements required by new service units projected over a reasonable period of time not to exceed twenty years;

(8) identification of all sources and levels of funding available to the governmental entity for the financing of the system improvements; and

(9) a schedule setting forth estimated dates for commencing and completing construction of all improvements identified in the capital improvements plan.

(C) Changes in the capital improvements plan must be approved in the same manner as approval of the original plan.

SECTION 6-1-970. Exemptions from impact fees.

The following structures or activities are exempt from impact fees:

(1) rebuilding the same amount of floor space of a structure that was destroyed by fire or other catastrophe;

(2) remodeling or repairing a structure that does not result in an increase in the number of service units;

(3) replacing a residential unit, including a manufactured home, with another residential unit on the same lot, if the number of service units does not increase;

(4) placing a construction trailer or office on a lot during the period of construction on the lot;

(5) constructing an addition on a residential structure which does not increase the number of service units;

(6) adding uses that are typically accessory to residential uses, such as a tennis court or a clubhouse, unless it is demonstrated clearly that the use creates a significant impact on the system's capacity; ~~and~~

(7) all or part of a particular development project if:

(a) the project is determined to create affordable housing; and

(b) the exempt development's proportionate share of system improvements is funded through a revenue source other than development impact fees;

(8) constructing a new elementary, middle, or secondary school; and

(9) constructing a new volunteer fire department. [added by 2016 Act No. 229]

SECTION 6-1-980. Calculation of impact fees.

(A) The impact fee for each service unit may not exceed the amount determined by dividing the costs of the capital improvements by the total number of projected service units that potentially could use the capital improvement. If the number of new service units projected over a reasonable period of time is less than the total number of new service units shown by the approved land use assumptions at full development of the service area, the maximum impact fee for each service unit must be calculated by dividing the costs of the part of the capital improvements necessitated by and attributable to the projected new service units by the total projected new service units.

(B) An impact fee must be calculated in accordance with generally accepted accounting principles.

SECTION 6-1-990. Maximum impact fee; proportionate share of costs of improvements to serve new development.

(A) The impact fee imposed upon a fee payor may not exceed a proportionate share of the costs incurred by the governmental entity in providing system improvements to serve the new development. The proportionate share is the cost attributable to the development after the governmental entity reduces the amount to be imposed by the following factors:

(1) appropriate credit, offset, or contribution of money, dedication of land, or construction of system improvements; and

(2) all other sources of funding the system improvements including funds obtained from economic development incentives or grants secured which are not required to be repaid.

(B) In determining the proportionate share of the cost of system improvements to be paid, the governmental entity imposing the impact fee must consider the:

(1) cost of existing system improvements resulting from new development within the service area or areas;

(2) means by which existing system improvements have been financed;

(3) extent to which the new development contributes to the cost of system improvements;

(4) extent to which the new development is required to contribute to the cost of existing system improvements in the future;

(5) extent to which the new development is required to provide system improvements, without charge to other properties within the service area or areas;

(6) time and price differentials inherent in a fair comparison of fees paid at different times; and

(7) availability of other sources of funding system improvements including, but not limited to, user charges, general tax levies, intergovernmental transfers, and special taxation.

SECTION 6-1-1000. Fair compensation or reimbursement of developers for costs, dedication of land or oversize facilities.

A developer required to pay a development impact fee may not be required to pay more than his proportionate share of the costs of the project, including the payment of money or contribution or dedication of land, or to oversize his facilities for use of others outside of the project without fair compensation or reimbursement.

SECTION 6-1-1010. Accounting; expenditures.

(A) Revenues from all development impact fees must be maintained in one or more interest-bearing accounts. Accounting records must be maintained for each category of system improvements and the service area in which the fees are collected. Interest earned on development impact fees must be considered funds of the account on which it is earned, and must be subject to all restrictions placed on the use of impact fees pursuant to the provisions of this article.

(B) Expenditures of development impact fees must be made only for the category of system improvements and within or for the benefit of the service area for which the impact fee was imposed as shown by the capital improvements plan and as authorized in this article. Impact fees may not be used for:

(1) a purpose other than system improvement costs to create additional improvements to serve new growth;

(2) a category of system improvements other than that for which they were collected; or

(3) the benefit of service areas other than the area for which they were imposed.

SECTION 6-1-1020. Refunds of impact fees.

(A) An impact fee must be refunded to the owner of record of property on which a development impact fee has been paid if:

(1) the impact fees have not been expended within three years of the date they were scheduled to be expended on a first-in, first-out basis; or

(2) a building permit or permit for installation of a manufactured home is denied.

(B) When the right to a refund exists, the governmental entity shall send a refund to the owner of record within ninety days after it is determined by the entity that a refund is due.
(C) A refund must include the pro rata portion of interest earned while on deposit in the impact fee account.

(D) A person entitled to a refund has standing to sue for a refund pursuant to this article if there has not been a timely payment of a refund pursuant to subsection (B) of this section.

SECTION 6-1-1030. Appeals.

(A) A governmental entity which adopts a development impact fee ordinance shall provide for administrative appeals by the developer or fee payor.

(B) A fee payor may pay a development impact fee under protest. A fee payor making the payment is not estopped from exercising the right of appeal provided in this article, nor is the fee payor estopped from receiving a refund of an amount considered to have been illegally collected. Instead of making a payment of an impact fee under protest, a fee payor, at his option, may post a bond or submit an irrevocable letter of credit for the amount of impact fees due, pending the outcome of an appeal.

(C) A governmental entity which adopts a development impact fee ordinance shall provide for mediation by a qualified independent party, upon voluntary agreement by both the fee payor and the governmental entity, to address a disagreement related to the impact fee for proposed development. Participation in mediation does not preclude the fee payor from pursuing other remedies provided for in this section or otherwise available by law.

SECTION 6-1-1040. Collection of development impact fees.

A governmental entity may provide in a development impact fee ordinance the method for collection of development impact fees including, but not limited to:

(1) additions to the fee for reasonable interest and penalties for nonpayment or late payment;

(2) withholding of the certificate of occupancy, or building permit if no certificate of occupancy is required, until the development impact fee is paid;

(3) withholding of utility services until the development impact fee is paid; and

(4) imposing liens for failure to pay timely a development impact fee.

SECTION 6-1-1050. Permissible agreements for payments or construction or installation of improvements by fee payors and developers; credits and reimbursements.

A fee payor and developer may enter into an agreement with a governmental entity, including an agreement entered into pursuant to the South Carolina Local Government Development Agreement Act, providing for payments instead of impact fees for facilities or services. That agreement may provide for the construction or installation of system improvements by the fee payor or developer and for credits or reimbursements for costs incurred by a fee payor or developer including interproject transfers of credits or reimbursement for project improvements which are used or shared by more than one development project. An impact fee may not be imposed on a fee payor or developer who has entered into an agreement as described in this section.

SECTION 6-1-1060. Article shall not affect existing laws.

(A) The provisions of this article do not repeal existing laws authorizing a governmental entity to impose fees or require contributions or property dedications for capital improvements. A development impact fee adopted in accordance with existing laws before the enactment of this article is not affected until termination of the development impact fee. A subsequent change or reenactment of the development impact fee must comply with the provisions of this article. Requirements for developers to pay in whole or in part for system improvements may be imposed by governmental entities only by way of impact fees imposed pursuant to the ordinance.

(B) Notwithstanding another provision of this article, property for which a valid building permit or certificate of occupancy has been issued or construction has commenced before the effective date of a development impact fee ordinance is not subject to additional development impact fees.

SECTION 6-1-1070. Shared funding among units of government; agreements.

(A) If the proposed system improvements include the improvement of public facilities under the jurisdiction of another unit of government including, but not limited to, a special purpose district that does not provide water and wastewater utilities, a school district, and a public service district, an agreement between the governmental entity and other unit of government must specify the reasonable share of funding by each unit. The governmental entity authorized to impose impact fees may not assume more than its reasonable share of funding joint improvements, nor may another unit of government which is not authorized to impose impact fees do so unless the expenditure is pursuant to an agreement under Section 6-1-1050 of this section.

(B) A governmental entity may enter into an agreement with another unit of government including, but not limited to, a special purpose district that does not provide water and wastewater utilities, a school district, and a public service district, that has the responsibility of providing the service for which an impact fee may be imposed. The determination of the amount of the impact fee for the contracting governmental entity must be made in the same manner and is subject to the same procedures and limitations as provided in this article. The agreement must provide for the collection of the impact fee by the governmental entity and for the expenditure of the impact fee by another unit of government including, but not limited to, a special purpose district that does not provide water and wastewater utilities, a school district, and a public services district unless otherwise provided by contract.

SECTION 6-1-1080. Exemptions; water or wastewater utilities.

The provisions of this chapter do not apply to a development impact fee for water or wastewater utilities, or both, imposed by a city, county, commissioners of public works, special purpose district, or nonprofit

corporation organized pursuant to Chapter 35 or 36 of Title 33, except that in order to impose a development impact fee for water or wastewater utilities, or both, the city, county, commissioners of public works, special purpose district or nonprofit corporation organized pursuant to Chapter 35 or 36 of Title 33 must:

(1) have a capital improvements plan before imposition of the development impact fee; and

(2) prepare a report to be made public before imposition of the development impact fee, which shall include, but not be limited to, an explanation of the basis, use, calculation, and method of collection of the development impact fee; and

(3) enact the fee in accordance with the requirements of Article 3 of this chapter.

SECTION 6-1-1090. Annexations by municipalities.

A county development impact fee ordinance imposed in an area which is annexed by a municipality is not affected by this article until the development impact fee terminates, unless the municipality assumes any liability which is to be paid with the impact fee revenue.

SECTION 6-1-2000. Taxation or revenue authority by political subdivisions.

This article shall not create, grant, or confer any new or additional taxing or revenue raising authority to a political subdivision which was not specifically granted to that entity by a previous act of the General Assembly.

SECTION 6-1-2010. Compliance with public notice or public hearing requirements.

Compliance with any requirement for public notice or public hearing in this article is considered to be in compliance with any other public notice or public hearing requirement otherwise applicable including, but not limited to, the provisions of Chapter 4, Title 30, and Article 3 of this chapter.

SB 235 became law on February 26, 2009 as 2009 S.C. Acts 99:

SECTION I.

(A) The Board of Trustees for Dorchester School District No. 2 may impose an impact fee on any developer for each new residential dwelling unit constructed by the developer within the school district. The fees must be paid to Dorchester School District No. 2 or, pursuant to an agreement, to a county or municipality that pays the fees to Dorchester School District No. 2, prior to or at the issuance of a certificate of occupancy for a dwelling unit.

(B) Dorchester School District No. 2 must maintain the impact fee funds in a separate interest bearing account. All interest earned and accruing to the account shall become funds of the account and must be subject to all restrictions placed on the use of impact fees pursuant to the provisions of this article. Accounting records must be maintained for each category of system improvements for which the fee is collected.

(C) The Board of Trustees for Dorchester School District No. 2 only may appropriate finds from the account for:

> (1) the construction, including preparation costs, of new public education facilities for grades K-12 within Dorchester School District No. 2; and
>
> (2) the payment of principal and interest on existing or new bonds issued by Dorchester School District No. 2 for the construction of public education facilities for grades K-12.

(D) The impact fee may be offset by any other cash payment paid by the developer and obtained by Dorchester School District No. 2 as a result of an agreement between the developer and another governmental entity.

(E) The Board of Trustees of Dorchester School District No. 2 will reexamine the amount of an impact fee being charged a developer upon receipt of a notice of appeal from the developer. If the notice of appeal is accompanied by a letter of credit in a form satisfactory to the board of trustees in an amount equal to the amount of impact fees owed, the new residential development may receive its certificate of occupancy while the appeal is pending

(F) For purposes of this section, 'dwelling unit' means all residential units, including, but not limited to, single family attached, single family detached, duplex, condominium, townhouse, multifamily, apartment, and mobile home, but excluding hotels and motels.

(G) The district's board of trustees shall set the impact fee at an amount not to exceed two thousand five hundred dollars per dwelling unit.

Tennessee Impact Fee/Facilities Tax Provisions

Tennessee Mayor-Aldermanic City Charter Powers

[downloaded on June 22, 2006]

[Mayor-aldermanic charter cities have very broad authority to levy taxes and fees, which has been interpreted to include the authority to impose impact fees (see for example, Tennessee Advisory Commission on Intergovernmental Relations, "Paying for Growth: General Assembly Authorizations for Development Taxes and Impact Fees," April 2002 for a list of mayor-aldermanic cities as well as cities and counties with special acts authorizing impact fees or development taxes).]

Tennessee Code
Title 6: Cities and Towns
Chapter 2: Powers of Municipalities with Mayor-Aldermanic Charter
Part 2: Municipal Authority Generally

6-2-201. General powers.

Every municipality incorporated under this charter may:

(1) Assess, levy and collect taxes for all general and special purposes on all subjects or objects of taxation, and privileges taxable by law for state, county or municipal purposes;

(2) Adopt classifications of the subjects and objects of taxation that are not contrary to law;

(3) Make special assessments for local improvements;

(4) Contract and be contracted with;

(5) Incur debts by borrowing money or otherwise, and give any appropriate evidence thereof, in the manner provided for in this section;

...

(14) Prescribe reasonable regulations regarding the construction, maintenance, equipment, operation and service of public utilities, compel reasonable extensions of facilities for these services, and assess fees for the use of or impact upon these services. Nothing in this subdivision (14) shall be construed to permit the alteration or impairment of any of the terms or provisions of any exclusive franchise granted or of any exclusive contract entered into under subdivisions (12) and (13);

(15) Establish, open, relocate, vacate, alter, widen, extend, grade, improve, repair, construct, reconstruct, maintain, light, sprinkle and clean public highways, streets, boulevards, parkways, sidewalks, alleys, parks, public grounds, public facilities, libraries and squares, wharves, bridges, viaducts, subways, tunnels, sewers and drains within or without the corporate limits, regulate their use within the corporate limits, assess fees for the use of or impact upon such property and facilities, and take and appropriate property therefor under the provisions of §§ 7-31-107 - 7-31-111 and 29-16-114, or any other manner provided by general laws;

(16) (A) Construct, improve, reconstruct and reimprove by opening, extending, widening, grading, curbing, guttering, paving, graveling, macadamizing, draining or otherwise improving any streets, highways, avenues, alleys or other public places within the corporate limits, and assess a portion of the cost of these improvements on the property abutting on or adjacent to these streets, highways or alleys under, and as provided by, title 7, chapters 32 and 33;

(B) Subdivision (16)(A) may not be construed to prohibit a municipality with a population of not less than seven hundred (700) nor more than seven hundred five (705) according to the 1990 federal census or any subsequent federal census from installing and maintaining a traffic control signal within its corporate limits, and any such municipality is expressly so authorized; provided, that no device shall be installed to control traffic on a state highway without the approval of the commissioner of transportation;

(17) Assess against abutting property within the corporate limits the cost of planting shade trees, removing from sidewalks all accumulations of snow, ice and earth, cutting and removing obnoxious weeds and rubbish, street lighting, street sweeping, street sprinkling, street flushing, and street oiling, the cleaning and rendering sanitary or removing, abolishing and prohibiting of closets and privies, in such manner as may be provided by general law or by ordinance of the board;

(18) Acquire, purchase, provide for, construct, regulate and maintain and do all things relating to all marketplaces, public buildings, bridges, sewers and other structures, works and improvements;

(19) Collect and dispose of drainage, sewage, ashes, garbage, refuse or other waste, or license and regulate their collection and disposal, and the cost of collection, regulation or disposal may be funded by taxation, special assessment to the property owner, user fees or other charges;

(20) License and regulate all persons, firms, corporations, companies and associations engaged in any business, occupation, calling, profession or trade not prohibited by law;

(21) Impose a license tax upon any animal, thing, business, vocation, pursuit, privilege or calling not prohibited by law;

...

(29) Establish schools, determine the necessary boards, officers and teachers required therefor, and fix their compensation, purchase or otherwise acquire land for or assess a fee for use of, or impact upon, schoolhouses, playgrounds and other purposes connected with the schools, purchase or erect all necessary buildings and do all other acts necessary to establish, maintain and operate a complete educational system within the municipality;

...

(32) Have and exercise all powers that now or hereafter it would be competent for this charter specifically to enumerate, as fully and completely as though these powers were specifically enumerated.

Summary of the County Powers Relief Act

[downloaded from the University of Tennessee County Technical Assistance Service web site, http://www.ctas.utk.edu/public/web/ctas.nsf/FrontPage?readform, on September 23, 2006]

Near the end of the 2006 legislative session, the General Assembly passed SB 3839 (sponsored by Sen. Ramsey)/HB 3469 (sponsored by Rep. Rinks). This legislation was designated the "County Powers Relief Act." The purpose of this bill was to provide relief to county governments that are experiencing rapid population growth and the associated costs and burdens this growth places on a public K-12 education system. It enacts a new Prt 29 under Title 67, Chapter 4 of the Tennessee Code to authorize growth counties, as defined under the act, to enact a "county school facilities tax" on residential development. The act took effect upon becoming a law. It was signed by the Governor on June 20, 2006, and was designated 2006 Public Chapter 953.

Growth Counties

A county may meet the criteria to be a growth county by one of two ways: (1) The county experienced a 20% or greater increase in population between the last 2 federal decennial censuses (or the county experiences that level of growth between any subsequent federal censuses); or (2) the county experienced a 9% or greater increase in population over the period from 2000 to 2004 (or over any subsequent 4 year period). Counties that meet these criteria are authorized to levy a tax on the privilege of residential development to be known as a "county school facilities tax."

Adoption, Applicable Rates and Exempt Properties

• Before the tax may be levied, the county is required to have adopted a capital improvement program.

• The tax can then be levied by a resolution adopted by a 2/3 vote of the entire membership of the county legislative body at 2 consecutive, regularly scheduled meetings. A sample resolution is included in this spotlight.

• The tax may be levied at a rate not to exceed $1.00 per square foot. Square footage is determined based on the total heated or air-conditioned residential living space.

• Once adopted, the rate of the tax cannot be increased for 4 years. Once the 4 year period has run, the county legislative body may increase the rate, but by no more than 10%. After any increase, the rate is again frozen for a four year period. County commissions should seriously consider these limitations when deciding the initial rate for the tax levy.

• Public buildings, places of worship, barns and agricultural buildings, replacement buildings for structures damaged by disaster, buildings owned by 501(c)(3) nonprofit corporations and buildings constructed in an area designated by the federal government as a blighted, distressed or urban renewal zone are exempt from the tax.

Administration and Collection

• Liability for the tax is tracked through the building permit system. If a county qualifying as a growth county does not have a building permit system, it will need to institute one in order to administer and collect this tax.

• When a permit for residential development is issued, the official issuing the permit is to provide the applicant with a form estimating the school facilities tax that will apply to the property. A copy of this information is forwarded to the official designated to collect the tax.
• If the building permit is issued by a municipal building official, that official is also directed by the law to fill out a form estimating the tax and forward a copy of it to the county official or employee who collects the tax.

• In the alternative, the county may contract with any municipality within the county through an interlocal agreement to designate the municipal building official as a collector of the tax and provide for the municipality to receive a commission on the taxes collected by the municipality for the county on residential development in the municipality.

• The tax is not due and payable by the permit holder until the earlier of 1 year from the date the permit is issued or 30 days after the property is sold. At that time, the holder of the building permit becomes liable for paying the tax. The tax is paid by the person who acquired the building permit, not by the purchaser of the home.

• If construction has not been completed or the property has not sold after 1 year, the holder of the building permit may request an extension. A total of 2 extensions may be granted.

• At the time the tax is paid, the collector of the tax is directed to determine whether the actual square footage of the completed structure matches the proposed square footage shown on the building permit.

• Any person or entity that owes delinquent school facilities taxes is ineligible to receive other building permits until the delinquency, and any penalties and fees, are paid in full.

• The county is required to provide for a procedure for administrative review of the decisions of officials administering the tax. Such administrative review is subject to judicial review in accordance with existing law.

• The legislative body is also authorized to adopt any guidelines, procedures, regulations and forms necessary to implement, administer and enforce the tax.

Required Use of the Revenue

• All revenue from this tax is turned over to the county trustee for deposit. The revenue is required by law to be used exclusively for funding growth-related capital expenditures for education, including the retirement of bonded indebtedness.

• Due to the limitations on the use of the funds, it is recommended that the revenue be directed to either an education debt service fund or capital projects fund.

• The revenue from the tax could be used to pay off indebtedness on school construction projects that occurred prior to the levy of the tax so long as it can be shown that those projects were reasonably related to growth.

Prohibitions on Other Taxes

• The bill establishes this law as the exclusive authority for local governments to adopt any new or additional adequate facilities taxes on development. This will prevent future private acts for development taxes.

• The bill prohibits counties from enacting any impact fees or local real estate transfer taxes in the future by either public or private act.

• The bill preserves existing development taxes and impact fees to the extent authorized by any private acts in effect when the act became a law. The bill allows a city or county to revise the dedicated use and purpose of the tax levied by a pre-existing tax from public facilities to public school facilities. However, the General Assembly is not authorized to amend a pre-existing act to increase the development tax levied by the act or authorize additional development taxes or impact fees.

• Counties that levy a development tax or impact fee by private act under prior law may not levy the school facilities tax authorized by this act so long as they are levying and collecting development taxes or impact fees under the authority of the private act. To use the authority provided by the County Powers Relief Act, the county will first have to take steps to repeal any resolutions levying development taxes or impact fees under pre-existing private acts.

Future Eligibility for Other Counties

• Under the provisions of the law, 39 counties currently qualify as growth counties (see the chart below for more detail).

• After the next federal census and after each year's population estimates are released by the census bureau, it is possible that other counties will qualify as a growth county under the standards for growth over either the 10 or 4 year period. At that time, those counties will also be eligible to enact this tax.

• In addition, the act includes language that requires the General Assembly, in the 2010 legislative session, to review the provisions of the act to ascertain the effect on and the needs of those counties which did not qualify to levy the tax under the act. At that time, it is possible the General Assembly will expand or modify the provisions governing which counties may levy the tax.

Counties Qualifying to Enact Adequate Facilities Tax

Counties Experiencing More than 20% Growth from the 1990 to 2000 Census
Listed in order based on rate of population growth

Williamson*	56.30%
Rutherford*	53.52%
Sevier	39.43%
Meigs	38.01%
Tipton	36.48%
Cumberland	34.74%
Jefferson	34.16%
Montgomery*	34.10%
Hickman*	33.07%
Cheatham*	32.32%
Wilson*	32.13%
Robertson*	31.19%
Stewart	30.50%
Union	30.04%
Sequatchie	28.29%
Macon*	28.17%
Bledsoe	27.90%
Monroe	27.57%
Johnson	27.12%
Maury*	26.79%
Sumner*	26.30%
Smith	25.24%
Loudon	25.06%
Marshall*	24.27%
Bedford	23.59%
Blount	23.09%
Dickson*	23.09%
Lewis	22.93%
Trousdale	22.62%

Cannon	22.54%
Moore	21.58%
Dekalb	21.33%
Putnam	21.30%
Chester	21.23%
Wayne	20.86%
Grainger	20.85%
Hardeman	20.23%
Hawkins	20.19%

Counties Experiencing More than 9% Growth During 2000 - 2004
(Counties are not listed if they already qualify above)

Fayette*	16.73% growth over 2000-2004

* Indicates county already has some form of development tax or impact fee by private act

County Powers Relief Act

[Text of bill downloaded from Tennessee Legislature's web site on September 23, 2006]

CHAPTER NO. 953
HOUSE BILL NO. 3469
By Representatives Curtiss, Rinks, Maddox
Substituted for: Senate Bill No. 3839
By Senators Ramsey, Kyle
AN ACT to amend Tennessee Code Annotated, Title 67, relative to taxes and licenses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following as a new part 29:

§67-4-2901. This part shall be known and may be cited as the "County Powers Relief Act."

§67-4-2902. The purpose of this part is to authorize counties to levy a privilege tax on persons and entities engaged in the residential development of property in order to provide a county with an additional source of funding to defray the cost of providing school facilities to meet the needs of the citizens of the county as a result of population growth.

§67-4-2903. As used in this part, unless the context otherwise requires:

(1) "Building" means any structure built for the support, shelter, or enclosure of persons, chattels, or movable property of any kind; the term includes a mobile home. "Building" does not mean any structures used primarily for agricultural purposes.

(2) "Building permit" means a permit for development issued in the county, whether by a county, metropolitan or municipal government.

(3) "Capital improvement program" means a proposed schedule of future capital projects, listed in order of construction priority, together with cost estimates and the anticipated means of financing each project requiring the expenditure of public funds, over and above the annual local government operating expenses, for the purchase, construction, or replacement of physical assets.

(4) "County" means a county or metropolitan government.

(5) "County school facilities privilege tax" means a tax on new residential development as defined herein.

(6) "Development" means the construction, building, erection, or improvement to land by providing a new building or structure which provides floor area for residential use.

(7) "Dwelling unit" means a room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease on a daily, weekly, monthly or longer basis; physically separated from any other room, rooms or dwelling units which may be in the same building; and containing independent cooking and sleeping facilities.

(8) "Floor area" for residential development means the total of the gross horizontal area of all floors, including basements, cellars, or attics, which is heated or air-conditioned living space.

(9) "Governing body" means the county legislative body or metropolitan council.
(10) "Person" means any individual, firm, partnership, limited liability company, joint-venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and the plural as well as the singular number.

(11) "Place of worship" means that portion of a building, owned by a religious institution which has property tax exempt status, which is used for worship services and related functions; provided however, that a place of worship does not include buildings and portions of buildings which are used for purposes other than worship and related functions or which are intended to be leased, rented or used by persons who do not have a tax exempt status.

(12) "Public building" means a building owned by the state of Tennessee or any agency or political subdivision of the state of Tennessee, including, but not limited to, counties, metropolitan governments, municipalities, school districts or special districts, or the federal government or any agency thereof.

(13) "Residential" means the development of any property for a dwelling unit or units.

§67-4-2904. Engaging in the act of residential development within a county, except as excluded by this part, is declared to be a privilege upon which a county, by resolution or ordinance of its governing body, may levy a tax subject to the conditions and limitations contained in this part. Such resolution or ordinance shall be adopted by a two-thirds vote (2/3) of the entire membership of the county legislative body at two (2) consecutive, regularly scheduled meetings.

§67-4-2905. After levying the tax, the county governing body shall, by resolution or ordinance adopted by majority vote, adopt administrative guidelines, procedures, regulations and forms necessary to properly implement, administer and enforce the provisions of this part.

§67-4-2906. This part shall not apply to development of:

(1) Public buildings;

(2) Places of worship;

(3) Barns or other outbuildings used for agricultural purposes;

(4) Replacement buildings or structures for previously existing buildings and structures destroyed by fire or other disaster;

(5) A building or structure owned by a nonprofit corporation which is a qualified 501(c)(3) corporation under the federal Internal Revenue Code, as amended; or

(6) A building or structure located in any census tract of the county that has been designated by the federal government as being eligible for federal incentives because of blight, economic distress or urban renewal, upon a proper finding by the county legislative body that said exemption is necessary to stimulate growth in these economically challenged areas.

§67-4-2907. A governing body is prohibited from levying a tax pursuant to this part unless the county meets one (1) or more of the following criteria:

(a) The county experienced a growth rate of twenty percent (20%) or more in total population from the 1990 federal census to the 2000 federal census, or the county experiences growth of twenty percent (20%) or more between any subsequent federal decennial censuses; or

(b) The county experienced a nine percent (9%) or more increase in population over the period from the year 2000 to 2004 or over a subsequent four (4) year period according to U.S. Census Bureau population estimates.

§67-4-2908. For the exercise of the privilege of development, a county may levy a tax based upon the floor area of residential development. A county initially levying a tax under the authority granted by this part may levy such tax at a rate not to exceed one dollar ($1.00) per square foot on residential property. Whenever a county has levied a tax pursuant to this part or increased the rate of the tax as provided below, it may not increase the rate of such tax or levy an additional tax on the privilege of development for a period of four (4) years from the effective date of the tax or rate increase. After four (4) years from the date the county initially levies the tax or from the date of the last increase in the rate of the tax, the county legislative body may increase the rate of the tax by a percentage not to exceed ten percent (10%).

§67-4-2909. A governing body shall not levy a tax pursuant to this part unless it has adopted a capital improvement program. The adopted capital improvement program may be amended by the governing body.

§67-4-2910.

(a) Any tax levied pursuant to this part shall be collected in the following manner:

(1) At the time of application for a building permit for residential development, the municipal or county official issuing the permit shall compute the estimated tax liability for the county school facilities privilege tax, based upon the proposed square footage of the facility to be built and the current rate of the county's school facilities privilege tax. As a condition of receiving the permit, the applicant shall sign a form indicating that the applicant recognizes the liability for the tax. The official shall keep one (1) copy of the form for his or her records and shall provide a copy to the applicant. If the permit is issued by a municipal building official, such official shall also forward a copy of the form within thirty (30) days of the issuance of the building permit to the county official or employee who has been designated by the county legislative body to collect such tax. As an alternative, the county and any municipality within the county may provide by interlocal agreement for the municipal building official to be designated as a collector of the tax and provide for a commission to be paid to the municipality for such services.

(2) The tax shall not be due until the earlier of one (1) year from the date of issuance of the building permit or thirty (30) days after the first transfer of title to the property being developed after the building permit is issued. If, after one (1) year from issuance of the building permit, the building or structure is not complete or title has not been transferred, the permit holder may, in lieu of paying the tax, request an extension for one (1) year. The permit holder may request a maximum of two (2) extensions. Such extensions shall not be denied if the permit holder makes a showing to the official responsible for collecting the tax that the building or structure is not complete.

(3) Once it becomes due, the tax shall be paid to the official or officials designated by the county governing body to collect the tax. At the time of payment, the official shall review the tax liability to determine whether the square footage of the completed building or structure corresponds to the initial estimated square footage in the building permit. The tax shall be computed using the actual square footage of the completed building or structure, but the rate of the tax shall be based upon the rate applicable at the time the permit was issued.

(4) The revenue from the tax shall be paid over to the county trustee within thirty (30) days for deposit in accordance with §67-4-2911.

(b)
(1) If the tax is not paid by a permit holder within ninety (90) days of the due date, the official responsible for collection of the tax shall report this delinquency to the county's delinquent tax attorney. The delinquent tax attorney shall bring an action against the permit holder for the full amount of the tax plus statutory interest and a penalty of fifty percent (50%) of the amount of tax owed. The compensation of the delinquent tax attorney for such services shall be determined by agreement between the county trustee and the delinquent tax attorney.

(2) No permit holder who owes delinquent school facilities taxes shall be eligible to receive a building permit for any other project in the county until such time as the delinquency, plus and penalties and interest, are paid in full.

§67-4-2911. The taxes collected pursuant to this act shall be remitted by the collector to the county or metropolitan government trustee who shall place such tax proceeds in such fund or funds as designated by the governing body, but such tax proceeds shall be used exclusively for the purpose of funding capital expenditures for education, including the retirement of bonded indebtedness, the need for which is reasonably related to population growth.

§67-4-2912. Any county or metropolitan government levying a tax pursuant to this part shall provide by resolution or ordinance a procedure whereby any person aggrieved by the decision of any responsible official in administering this tax may obtain review of the official's decision administratively. The result of the administrative decision shall be subject to judicial review in accordance with law.

§67-4-2913. After June 20, 2006, no county shall be authorized to enact an impact fee on development or a local real estate transfer tax by private or public act. In addition, this part shall be the exclusive authority for local governments to adopt any new or additional adequate facilities taxes on development. However, the provisions of this part shall not be construed to prevent a municipality or county from exercising any authority to levy or collect similar development taxes or impact fees granted by a private act that was in effect prior to June 20, 2006 or from revising the dedicated use and purpose of a tax on new development from public facilities to public school facilities. A county levying a development tax or impact fee by private act on June 20, 2006 shall be prohibited from using the authority provided in this part so long as the private act is in effect.

SECTION 2. The general assembly shall, in the legislative session of 2010, review the provisions of this act to ascertain the effect on and the needs of those counties not granted local enactment authority under this act.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 26, 2006

APPROVED this 20th day of June 2006

Correction to County Powers Relief Act
[Tennessee Municipal League website, https://www.tml1.org/issue/correction-county-powers-relief-act, 2/14/2022]

In 2005, counties and certain metro governments affected by growth were seeking additional funds to address school construction needs. The county representatives sought authority to establish a local real estate transfer tax as a means to supplement education funding. This effort was opposed by realtors and developers.

Representatives of the administration and the general assembly convened discussions with representatives of county government, realtors and developers. As the underlying request did not include municipal governments, municipalities did not participate in these discussions.

These discussions resulted in the adoption of the "County Powers Relief Act of 2006" in the closing days of the 2005 legislative session. This act granted county governments and certain metro governments authority to, "levy a privilege tax on persons and entities engaged in the residential development of property in order to provide a county with an additional source of funding to defray the cost of providing school facilities to meet the needs of the citizens of the county as a result of population growth."

Under the act, a county may levy a tax on residential development only if it meets at least one of the following criteria:

> (1) The county experienced a growth rate of 20 percent or more in total population from the 1990 federal census to the 2000 federal census, or the county experiences growth of 20 percent or more between any subsequent federal decennial censuses; or
>
> (2) The county experienced a 9 percent or more increase in population over the period from the year 2000 to 2004, or over a subsequent four-year period, according to the United States census bureau population estimates.

In exchange for the aforementioned authority granted counties and certain metro governments under the act, counties agreed to surrender their authority to enact an impact fee on development or a local real estate transfer tax.

As a result of a drafting error, the "County Powers Relief Act of 2006" has been determined to restrict municipalities' authority to levy a tax on development.

Although municipal government was not a participant in the initial push for funding or the subsequent discussions, and although municipal governments were not a party to the final agreement that led to the "County Powers Relief Act of 2006," the Attorney General has opined that the act restricts municipal government's authority to increase an existing adequate facilities tax or to impose any new adequate facilities tax on residential development.

Despite the fact that the act's title and statement of purpose clearly suggests it was intended to address counties, and despite the fact that the act includes more than forty references to counties; yet does not include a single reference to municipal governments, the Attorney General has determined that the act imposes limits on municipal taxing authority.

Even though counties willingly entered into an agreement whereby in exchange for new authority to address school construction needs counties agreed to a statutory prohibition of the adoption of new development taxes, the Attorney General has indicated that the taxing authority of municipal government, which entered into no such agreement, is also limited by the act.

The Attorney General's opinion is based on the use of the term "local governments" in the following paragraph from the act: "After the effective date of this act, no county shall be authorized to enact an impact

fee on development or a local real estate transfer tax by private or public act. In addition, this part shall be the exclusive authority for local governments to adopt any new or additional adequate facilities taxes on development."

The Attorney General reasoned that as "local government" is most commonly used in the statutes to describe county, metropolitan and municipal government, then the limitations imposed under the act are applicable to municipal governments.

Proposed Legislation

Amend the "County Powers Relief Act of 2006" to reflect the original legislative intent, as evidenced in the title and statement of purpose, by replacing "local governments" in TCA, § 67-4-2913 with "county or metropolitan government."

Benefits to Municipalities

Replacing "local government" with a term that is more consistent with the expressed purpose and stated objective of the act will restore municipal authority and better enable municipalities to respond to the challenges associated with growth.

Tennessee Impact Fee Disclosure Requirement

[downloaded on June 22, 2006 from Tennessee Realtors Association website (http://www.tarnet.com/govaff/adqtaxdisc.html), which also has a list of all cities and counties that have enacted impact fees or adequate facilities taxes pursuant to special enabling acts]

CHAPTER NO. 171
SENATE BILL NO. 510
By Kilby, Ketron
Substituted for: House Bill No. 221
By Davidson

AN ACT to amend Tennessee Code Annotated, Title 66, Chapter 5, relative to residential property disclosures.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 66, Chapter 5, Part 2, is amended by adding the following as a new section: Section 66-5-211.

(a) In transfers involving the first sale of a dwelling, the owner of residential property shall furnish to the purchaser a statement disclosing the amount of any impact fees or adequate facilities taxes paid to any city or county on any parcel of land subject to transfer by sale, exchange, installment land sales contract, or lease with an option to buy.

(b) For the purpose of this section, unless the context otherwise requires:

(1) "Adequate facilities tax" means any privilege tax that is a development tax, by whatever name, imposed by a county or city, pursuant to any act of general or local application, on engaging in the act of development;

(2) "Development" means the construction, building, reconstruction, erection, extension, betterment, or improvement of land providing a building or structure of the addition to any building or structure or any part hereof, which provides, adds to, or increases the floor area of a residential or nonresidential use; and

(3) "Impact fee" means a monetary charge imposed by a county or municipal government pursuant to any act of general or local application, to regulate new development on real property. The amount of impact fees are related to the costs resulting from the new development and the revenues for this fee are earmarked for investment in the area of the new development.

SECTION 2. This act shall take effect July 1, 2005, the public welfare requiring it.

The following jurisdictions have implemented an Adequate Facilities Tax, Development Tax, and/or Impact Fee as of July 1, 2005 (from web site cited above):

Cheatham County
- Ashland City
- Kingston Springs
- Pegram

Dickson County
Fayette County
- Piperton

Hickman County
Macon County
Marshall County
Maury County
- Columbia
- Spring Hill

Montgomery County
Robertson County
- White House (including portion of city in Sumner County)

Rutherford County
- La Vergne
- Smyrna

Gatlinburg (Sevier County)
Sumner County
Trousdale County
Williamson County
- Brentwood
- Fairview
- Franklin
- Nolensville

Mount Juliet (Wilson County)

Texas Impact Fee Act

[downloaded July 6, 2013]

CHAPTER 395. FINANCING CAPITAL IMPROVEMENTS REQUIRED BY NEW DEVELOPMENT IN MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER LOCAL GOVERNMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 395.001. DEFINITIONS.

In this chapter:

(1) "Capital improvement" means any of the following facilities that have a life expectancy of three or more years and are owned and operated by or on behalf of a political subdivision:

(A) water supply, treatment, and distribution facilities; wastewater collection and treatment facilities; and storm water, drainage, and flood control facilities; whether or not they are located within the service area; and

(B) roadway facilities.

(2) "Capital improvements plan" means a plan required by this chapter that identifies capital improvements or facility expansions for which impact fees may be assessed.

(3) "Facility expansion" means the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization, or expansion of an existing facility to better serve existing development.

(4) "Impact fee" means a charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, and any other fee that functions as described by this definition. The term does not include:

(A) dedication of land for public parks or payment in lieu of the dedication to serve park needs;

(B) dedication of rights-of-way or easements or construction or dedication of on-site or off-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks, or curbs if the dedication or construction is required by a valid ordinance and is necessitated by and attributable to the new development;

(C) lot or acreage fees to be placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or sewer mains or lines; or

(D) other pro rata fees for reimbursement of water or sewer mains or lines extended by the political subdivision.

However, an item included in the capital improvements plan may not be required to be constructed except in accordance with Section 395.019(2), and an owner may not be required to construct or dedicate facilities and to pay impact fees for those facilities.

(5) "Land use assumptions" includes a description of the service area and projections of changes in land uses, densities, intensities, and population in the service area over at least a 10-year period.

(6) "New development" means the subdivision of land; the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units.

(7) "Political subdivision" means a municipality, a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, or, for the purposes set forth by Section 395.079, certain counties described by that section.

(8) "Roadway facilities" means arterial or collector streets or roads that have been designated on an officially adopted roadway plan of the political subdivision, together with all necessary appurtenances. The term includes the political subdivision's share of costs for roadways and associated improvements designated on the federal or Texas highway system, including local matching funds and costs related to utility line relocation and the establishment of curbs, gutters, sidewalks, drainage appurtenances, and rights-of-way.

(9) "Service area" means the area within the corporate boundaries or extraterritorial jurisdiction, as determined under Chapter 42, of the political subdivision to be served by the capital improvements or facilities expansions specified in the capital improvements plan, except roadway facilities and storm water, drainage, and flood control facilities. The service area, for the purposes of this chapter, may include all or part of the land within the political subdivision or its extraterritorial jurisdiction, except for roadway facilities and storm water, drainage, and flood control facilities. For roadway facilities, the service area is limited to an area within the corporate boundaries of the political subdivision and shall not exceed six miles. For storm water, drainage, and flood control facilities, the service area may include all or part of the land within the political subdivision or its extraterritorial jurisdiction, but shall not exceed the area actually served by the storm water, drainage, and flood control facilities designated in the capital improvements plan and shall not extend across watershed boundaries.

(10) "Service unit" means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards and based on historical data and trends applicable to the political subdivision in which the individual unit of development is located during the previous 10 years.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 566, Sec. 1(e), eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 345, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER B. AUTHORIZATION OF IMPACT FEE

Sec. 395.011. AUTHORIZATION OF FEE.

(a) Unless otherwise specifically authorized by state law or this chapter, a governmental entity or political subdivision may not enact or impose an impact fee.

(b) Political subdivisions may enact or impose impact fees on land within their corporate boundaries or extraterritorial jurisdictions only by complying with this chapter, except that impact fees may not be enacted or imposed in the extraterritorial jurisdiction for roadway facilities.

(c) A municipality may contract to provide capital improvements, except roadway facilities, to an area outside its corporate boundaries and extraterritorial jurisdiction and may charge an impact fee under the contract, but if an impact fee is charged in that area, the municipality must comply with this chapter.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.012. ITEMS PAYABLE BY FEE.

(a) An impact fee may be imposed only to pay the costs of constructing capital improvements or facility expansions, including and limited to the:

(1) construction contract price;

(2) surveying and engineering fees;

(3) land acquisition costs, including land purchases, court awards and costs, attorney's fees, and expert witness fees; and

(4) fees actually paid or contracted to be paid to an independent qualified engineer or financial consultant preparing or updating the capital improvements plan who is not an employee of the political subdivision.

(b) Projected interest charges and other finance costs may be included in determining the amount of impact fees only if the impact fees are used for the payment of principal and interest on bonds, notes, or other obligations issued by or on behalf of the political subdivision to finance the capital improvements or facility expansions identified in the capital improvements plan and are not used to reimburse bond funds expended for facilities that are not identified in the capital improvements plan.

(c) Notwithstanding any other provision of this chapter, the Edwards Underground Water District or a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may use impact fees to pay a staff engineer who prepares or updates a capital improvements plan under this chapter.

(d) A municipality may pledge an impact fee as security for the payment of debt service on a bond, note, or other obligation issued to finance a capital improvement or public facility expansion if:

(1) the improvement or expansion is identified in a capital improvements plan; and

(2) at the time of the pledge, the governing body of the municipality certifies in a written order, ordinance, or resolution that none of the impact fee will be used or expended for an improvement or expansion not identified in the plan.

(e) A certification under Subsection (d)(2) is sufficient evidence that an impact fee pledged will not be used or expended for an improvement or expansion that is not identified in the capital improvements plan.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 1995, 74th Leg., ch. 90, Sec. 1, eff. May 16, 1995.

Sec. 395.013. ITEMS NOT PAYABLE BY FEE.

Impact fees may not be adopted or used to pay for:

(1) construction, acquisition, or expansion of public facilities or assets other than capital improvements or facility expansions identified in the capital improvements plan;

(2) repair, operation, or maintenance of existing or new capital improvements or facility expansions;

(3) upgrading, updating, expanding, or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental, or regulatory standards;

(4) upgrading, updating, expanding, or replacing existing capital improvements to provide better service to existing development;

(5) administrative and operating costs of the political subdivision, except the Edwards Underground Water District or a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may use impact fees to pay its administrative and operating costs;

(6) principal payments and interest or other finance charges on bonds or other indebtedness, except as allowed by Section 395.012.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.014. CAPITAL IMPROVEMENTS PLAN.

(a) The political subdivision shall use qualified professionals to prepare the capital improvements plan and to calculate the impact fee. The capital improvements plan must contain specific enumeration of the following items:

(1) a description of the existing capital improvements within the service area and the costs to upgrade, update, improve, expand, or replace the improvements to meet existing needs and usage and stricter safety, efficiency, environmental, or regulatory standards, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;

(2) an analysis of the total capacity, the level of current usage, and commitments for usage of capacity of the existing capital improvements, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;

(3) a description of all or the parts of the capital improvements or facility expansions and their costs necessitated by and attributable to new development in the service area based on the approved land use assumptions, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;

(4) a definitive table establishing the specific level or quantity of use, consumption, generation, or discharge of a service unit for each category of capital improvements or facility expansions and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial, and industrial;

(5) the total number of projected service units necessitated by and attributable to new development within the service area based on the approved land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;

(6) the projected demand for capital improvements or facility expansions required by new service units projected over a reasonable period of time, not to exceed 10 years; and

(7) a plan for awarding:

(A) a credit for the portion of ad valorem tax and utility service revenues generated by new service units during the program period that is used for the payment of improvements, including the payment of debt, that are included in the capital improvements plan; or

(B) in the alternative, a credit equal to 50 percent of the total projected cost of implementing the capital improvements plan.

(b) The analysis required by Subsection (a)(3) may be prepared on a systemwide basis within the service area for each major category of capital improvement or facility expansion for the designated service area.

(c) The governing body of the political subdivision is responsible for supervising the implementation of the capital improvements plan in a timely manner.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, Sec. 2, eff. Sept. 1, 2001.

Sec. 395.015. MAXIMUM FEE PER SERVICE UNIT.

(a) The impact fee per service unit may not exceed the amount determined by subtracting the amount in Section 395.014(a)(7) from the costs of the capital improvements described by Section 395.014(a)(3) and dividing that amount by the total number of projected service units described by Section 395.014(a)(5).

(b) If the number of new service units projected over a reasonable period of time is less than the total number of new service units shown by the approved land use assumptions at full development of the service area, the maximum impact fee per service unit shall be calculated by dividing the costs of the part of the capital improvements necessitated by and attributable to projected new service units described by Section 395.014(a)(6) by the projected new service units described in that section.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, Sec. 3, eff. Sept. 1, 2001.

Sec. 395.016. TIME FOR ASSESSMENT AND COLLECTION OF FEE.

(a) This subsection applies only to impact fees adopted and land platted before June 20, 1987. For land that has been platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision before June 20, 1987, or land on which new development occurs or is proposed without platting, the political subdivision may assess the impact fees at any time during the development approval and building process. Except as provided by Section 395.019, the political subdivision may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.

(b) This subsection applies only to impact fees adopted before June 20, 1987, and land platted after that date. For new development which is platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision after June 20, 1987, the political subdivision may assess the impact fees before or at the time of recordation. Except as provided by Section 395.019, the political subdivision may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.

(c) This subsection applies only to impact fees adopted after June 20, 1987. For new development which is platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision before the adoption of an impact fee, an impact fee may not be collected on any service unit for which a valid building permit is issued within one year after the date of adoption of the impact fee.

(d) This subsection applies only to land platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision after adoption of an impact fee adopted after June 20, 1987. The political subdivision shall assess the impact fees before or at the time of recordation of a subdivision plat or other plat under Subchapter A, Chapter 212, or the subdivision or platting ordinance or procedures of any political subdivision in the official records of the county clerk of the county in which the tract is located. Except as provided by Section 395.019, if the political subdivision has water and wastewater capacity available:

(1) the political subdivision shall collect the fees at the time the political subdivision issues a building permit;

(2) for land platted outside the corporate boundaries of a municipality, the municipality shall collect the fees at the time an application for an individual meter connection to the municipality's water or wastewater system is filed; or

(3) a political subdivision that lacks authority to issue building permits in the area where the impact fee applies shall collect the fees at the time an application is filed for an individual meter connection to the political subdivision's water or wastewater system.

(e) For land on which new development occurs or is proposed to occur without platting, the political subdivision may assess the impact fees at any time during the development and building process and may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.

(f) An "assessment" means a determination of the amount of the impact fee in effect on the date or occurrence provided in this section and is the maximum amount that can be charged per service unit of such development. No specific act by the political subdivision is required.

(g) Notwithstanding Subsections (a)-(e) and Section 395.017, the political subdivision may reduce or waive an impact fee for any service unit that would qualify as affordable housing under 42 U.S.C. Section 12745, as amended, once the service unit is constructed. If affordable housing as defined by 42 U.S.C. Section 12745, as amended, is not constructed, the political subdivision may reverse its decision to waive or reduce the impact fee, and the political subdivision may assess an impact fee at any time during the development approval or building process or after the building process if an impact fee was not already assessed.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 52, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 345, Sec. 4, eff. Sept. 1, 2001.

Sec. 395.017. ADDITIONAL FEE PROHIBITED; EXCEPTION.

After assessment of the impact fees attributable to the new development or execution of an agreement for payment of impact fees, additional impact fees or increases in fees may not be assessed against the tract for any reason unless the number of service units to be developed on the tract increases. In the event of the increase in the number of service units, the impact fees to be imposed are limited to the amount attributable to the additional service units.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.018. AGREEMENT WITH OWNER REGARDING PAYMENT.

A political subdivision is authorized to enter into an agreement with the owner of a tract of land for which the plat has been recorded providing for the time and method of payment of the impact fees.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.019. COLLECTION OF FEES IF SERVICES NOT AVAILABLE.

Except for roadway facilities, impact fees may be assessed but may not be collected in areas where services are not currently available unless:

(1) the collection is made to pay for a capital improvement or facility expansion that has been identified in the capital improvements plan and the political subdivision commits to commence construction within two years, under duly awarded and executed contracts or commitments of staff time covering substantially all of the work required to provide service, and to have the service available within a reasonable period of time considering the type of capital improvement or facility expansion to be constructed, but in no event longer than five years;

(2) the political subdivision agrees that the owner of a new development may construct or finance the capital improvements or facility expansions and agrees that the costs incurred or funds advanced will be credited against the impact fees otherwise due from the new development or agrees to reimburse the owner for such costs from impact fees paid from other new developments that will use such capital improvements or facility expansions, which fees shall be collected and reimbursed to the owner at the time the other new development records its plat; or

(3) an owner voluntarily requests the political subdivision to reserve capacity to serve future development, and the political subdivision and owner enter into a valid written agreement.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.020. ENTITLEMENT TO SERVICES.

Any new development for which an impact fee has been paid is entitled to the permanent use and benefit of the services for which the fee was exacted and is entitled to receive immediate service from any existing facilities with actual capacity to serve the new service units, subject to compliance with other valid regulations.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.021. AUTHORITY OF POLITICAL SUBDIVISIONS TO SPEND FUNDS TO REDUCE FEES.

Political subdivisions may spend funds from any lawful source to pay for all or a part of the capital improvements or facility expansions to reduce the amount of impact fees.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.022. AUTHORITY OF POLITICAL SUBDIVISION TO PAY FEES.

(a) Political subdivisions and other governmental entities may pay impact fees imposed under this chapter.

(b) A school district is not required to pay impact fees imposed under this chapter unless the board of trustees of the district consents to the payment of the fees by entering a contract with the political subdivision that imposes the fees. The contract may contain terms the board of trustees considers advisable to provide for the payment of the fees.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 250, Sec. 1, eff. May 25, 2007.

Sec. 395.023. CREDITS AGAINST ROADWAY FACILITIES FEES.

Any construction of, contributions to, or dedications of off-site roadway facilities agreed to or required by a political subdivision as a condition of development approval shall be credited against roadway facilities impact fees otherwise due from the development.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.024. ACCOUNTING FOR FEES AND INTEREST.

(a) The order, ordinance, or resolution levying an impact fee must provide that all funds collected through the adoption of an impact fee shall be deposited in interest-bearing accounts clearly identifying the category of capital improvements or facility expansions within the service area for which the fee was adopted.

(b) Interest earned on impact fees is considered funds of the account on which it is earned and is subject to all restrictions placed on use of impact fees under this chapter.

(c) Impact fee funds may be spent only for the purposes for which the impact fee was imposed as shown by the capital improvements plan and as authorized by this chapter.

(d) The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.025. REFUNDS.

(a) On the request of an owner of the property on which an impact fee has been paid, the political subdivision shall refund the impact fee if existing facilities are available and service is denied or the political subdivision has, after collecting the fee when service was not available, failed to commence construction within two years or service is not available within a reasonable period considering the type of capital improvement or facility expansion to be constructed, but in no event later than five years from the date of payment under Section 395.019(1).

(b) Repealed by Acts 2001, 77th Leg., ch. 345, Sec. 9, eff. Sept. 1, 2001.

(c) The political subdivision shall refund any impact fee or part of it that is not spent as authorized by this chapter within 10 years after the date of payment.

(d) Any refund shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Section 302.002, Finance Code, or its successor statute.

(e) All refunds shall be made to the record owner of the property at the time the refund is paid. However, if the impact fees were paid by another political subdivision or governmental entity, payment shall be made to the political subdivision or governmental entity.

(f) The owner of the property on which an impact fee has been paid or another political subdivision or governmental entity that paid the impact fee has standing to sue for a refund under this section.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 1997, 75th Leg., ch. 1396, Sec. 37, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.82, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 345, Sec. 9, eff. Sept. 1, 2001.

SUBCHAPTER C. PROCEDURES FOR ADOPTION OF IMPACT FEE

Sec. 395.041. COMPLIANCE WITH PROCEDURES REQUIRED.

Except as otherwise provided by this chapter, a political subdivision must comply with this subchapter to levy an impact fee.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.0411. CAPITAL IMPROVEMENTS PLAN.

The political subdivision shall provide for a capital improvements plan to be developed by qualified professionals using generally accepted engineering and planning practices in accordance with Section 395.014.

Added by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.042. HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN.

To impose an impact fee, a political subdivision must adopt an order, ordinance, or resolution establishing a public hearing date to consider the land use assumptions and capital improvements plan for the designated service area.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.043. INFORMATION ABOUT LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN AVAILABLE TO PUBLIC.

On or before the date of the first publication of the notice of the hearing on the land use assumptions and capital improvements plan, the political subdivision shall make available to the public its land use assumptions, the time period of the projections, and a description of the capital improvement facilities that may be proposed.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.044. NOTICE OF HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN.

(a) Before the 30th day before the date of the hearing on the land use assumptions and capital improvements plan, the political subdivision shall send a notice of the hearing by certified mail to any person who has given written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice of the hearing within two years preceding the date of adoption of the order, ordinance, or resolution setting the public hearing.

(b) The political subdivision shall publish notice of the hearing before the 30th day before the date set for the hearing, in one or more newspapers of general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies.

(c) The notice must contain:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN RELATING TO POSSIBLE ADOPTION OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the land use assumptions and capital improvements plan under which an impact fee may be imposed; and

(4) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the land use assumptions and capital improvements plan.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.045. APPROVAL OF LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN REQUIRED.

(a) After the public hearing on the land use assumptions and capital improvements plan, the political subdivision shall determine whether to adopt or reject an ordinance, order, or resolution approving the land use assumptions and capital improvements plan.

(b) The political subdivision, within 30 days after the date of the public hearing, shall approve or disapprove the land use assumptions and capital improvements plan.

(c) An ordinance, order, or resolution approving the land use assumptions and capital improvements plan may not be adopted as an emergency measure.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.0455. SYSTEMWIDE LAND USE ASSUMPTIONS.

(a) In lieu of adopting land use assumptions for each service area, a political subdivision may, except for storm water, drainage, flood control, and roadway facilities, adopt systemwide land use assumptions, which cover all of the area subject to the jurisdiction of the political subdivision for the purpose of imposing impact fees under this chapter.

(b) Prior to adopting systemwide land use assumptions, a political subdivision shall follow the public notice, hearing, and other requirements for adopting land use assumptions.

(c) After adoption of systemwide land use assumptions, a political subdivision is not required to adopt additional land use assumptions for a service area for water supply, treatment, and distribution facilities or wastewater collection and treatment facilities as a prerequisite to the adoption of a capital improvements plan or impact fee, provided the capital improvements plan and impact fee are consistent with the systemwide land use assumptions.

Added by Acts 1989, 71st Leg., ch. 566, Sec. 1(b), eff. Aug. 28, 1989.

Sec. 395.047. HEARING ON IMPACT FEE.

On adoption of the land use assumptions and capital improvements plan, the governing body shall adopt an order or resolution setting a public hearing to discuss the imposition of the impact fee. The public hearing must be held by the governing body of the political subdivision to discuss the proposed ordinance, order, or resolution imposing an impact fee.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.049. NOTICE OF HEARING ON IMPACT FEE.

(a) Before the 30th day before the date of the hearing on the imposition of an impact fee, the political subdivision shall send a notice of the hearing by certified mail to any person who has given written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice of the hearing within two years preceding the date of adoption of the order or resolution setting the public hearing.

(b) The political subdivision shall publish notice of the hearing before the 30th day before the date set for the hearing, in one or more newspapers of general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies.

(c) The notice must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON ADOPTION OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the adoption of an impact fee;

(4) the amount of the proposed impact fee per service unit; and

(5) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the plan and proposed fee.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.050. ADVISORY COMMITTEE COMMENTS ON IMPACT FEES.

The advisory committee created under Section 395.058 shall file its written comments on the proposed impact fees before the fifth business day before the date of the public hearing on the imposition of the fees.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.051. APPROVAL OF IMPACT FEE REQUIRED.

(a) The political subdivision, within 30 days after the date of the public hearing on the imposition of an impact fee, shall approve or disapprove the imposition of an impact fee.
(b) An ordinance, order, or resolution approving the imposition of an impact fee may not be adopted as an emergency measure.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.052. PERIODIC UPDATE OF LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN REQUIRED.

(a) A political subdivision imposing an impact fee shall update the land use assumptions and capital improvements plan at least every five years. The initial five-year period begins on the day the capital improvements plan is adopted.

(b) The political subdivision shall review and evaluate its current land use assumptions and shall cause an update of the capital improvements plan to be prepared in accordance with Subchapter B.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, Sec. 6, eff. Sept. 1, 2001.

Sec. 395.053. HEARING ON UPDATED LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN.

The governing body of the political subdivision shall, within 60 days after the date it receives the update of the land use assumptions and the capital improvements plan, adopt an order setting a public hearing to discuss and review the update and shall determine whether to amend the plan.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.054. HEARING ON AMENDMENTS TO LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN, OR IMPACT FEE.

A public hearing must be held by the governing body of the political subdivision to discuss the proposed ordinance, order, or resolution amending land use assumptions, the capital improvements plan, or the impact fee. On or before the date of the first publication of the notice of the hearing on the amendments, the land use assumptions and the capital improvements plan, including the amount of any proposed amended impact fee per service unit, shall be made available to the public.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.055. NOTICE OF HEARING ON AMENDMENTS TO LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN, OR IMPACT FEE.

(a) The notice and hearing procedures prescribed by Sections 395.044(a) and (b) apply to a hearing on the amendment of land use assumptions, a capital improvements plan, or an impact fee.

(b) The notice of a hearing under this section must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON AMENDMENT OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the amendment of land use assumptions and a capital improvements plan and the imposition of an impact fee; and

(4) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the update.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, Sec. 7, eff. Sept. 1, 2001.

Sec. 395.056. ADVISORY COMMITTEE COMMENTS ON AMENDMENTS.

The advisory committee created under Section 395.058 shall file its written comments on the proposed amendments to the land use assumptions, capital improvements plan, and impact fee before the fifth business day before the date of the public hearing on the amendments.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.057. APPROVAL OF AMENDMENTS REQUIRED.

(a) The political subdivision, within 30 days after the date of the public hearing on the amendments, shall approve or disapprove the amendments of the land use assumptions and the capital improvements plan and modification of an impact fee.

(b) An ordinance, order, or resolution approving the amendments to the land use assumptions, the capital improvements plan, and imposition of an impact fee may not be adopted as an emergency measure.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.0575. DETERMINATION THAT NO UPDATE OF LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN OR IMPACT FEES IS NEEDED.

(a) If, at the time an update under Section 395.052 is required, the governing body determines that no change to the land use assumptions, capital improvements plan, or impact fee is needed, it may, as an alternative to the updating requirements of Sections 395.052-395.057, do the following:

(1) The governing body of the political subdivision shall, upon determining that an update is unnecessary and 60 days before publishing the final notice under this section, send notice of its determination not to update the land use assumptions, capital improvements plan, and impact fee by certified mail to any person who has, within two years preceding the date that the final notice of this matter is to be published, give written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice of hearings related to impact fees. The notice must contain the information in Subsections (b)(2)-(5).

(2) The political subdivision shall publish notice of its determination once a week for three consecutive weeks in one or more newspapers with general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies. The notice of public hearing may not be in the part of the paper in which legal notices and classified ads appear and may not be smaller than one-quarter page of a standard-size or tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type.

(b) The notice must contain the following:

(1) a headline to read as follows:

"NOTICE OF DETERMINATION NOT TO UPDATE

LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS

PLAN, OR IMPACT FEES";

(2) a statement that the governing body of the political subdivision has determined that no change to the land use assumptions, capital improvements plan, or impact fee is necessary;

(3) an easily understandable description and a map of the service area in which the updating has been determined to be unnecessary;

(4) a statement that if, within a specified date, which date shall be at least 60 days after publication of the first notice, a person makes a written request to the designated official of the political subdivision requesting that the land use assumptions, capital improvements plan, or impact fee be updated, the governing body must comply with the request by following the requirements of Sections 395.052-395.057; and

(5) a statement identifying the name and mailing address of the official of the political subdivision to whom a request for an update should be sent.

(c) The advisory committee shall file its written comments on the need for updating the land use assumptions, capital improvements plans, and impact fee before the fifth business day before the earliest notice of the government's decision that no update is necessary is mailed or published.

(d) If, by the date specified in Subsection (b)(4), a person requests in writing that the land use assumptions, capital improvements plan, or impact fee be updated, the governing body shall cause an update of the land use assumptions and capital improvements plan to be prepared in accordance with Sections 395.052-395.057.

(e) An ordinance, order, or resolution determining the need for updating land use assumptions, a capital improvements plan, or an impact fee may not be adopted as an emergency measure.

Added by Acts 1989, 71st Leg., ch. 566, Sec. 1(d), eff. Aug. 28, 1989.

Sec. 395.058. ADVISORY COMMITTEE.

(a) On or before the date on which the order, ordinance, or resolution is adopted under Section 395.042, the political subdivision shall appoint a capital improvements advisory committee.

(b) The advisory committee is composed of not less than five members who shall be appointed by a majority vote of the governing body of the political subdivision. Not less than 40 percent of the membership of the advisory committee must be representatives of the real estate, development, or building industries who are not employees or officials of a political subdivision or governmental entity. If the political subdivision has a planning and zoning commission, the commission may act as the advisory committee if the commission includes at least one representative of the real estate, development, or building industry who is not an employee or official of a political subdivision or governmental entity. If no such representative is a member of the planning and zoning commission, the commission may still act as the advisory committee if at least one such representative is appointed by the political subdivision as an ad hoc voting member of the planning and zoning commission when it acts as the advisory committee. If the impact fee is to be applied in the extraterritorial jurisdiction of the political subdivision, the membership must include a representative from that area.

(c) The advisory committee serves in an advisory capacity and is established to:

(1) advise and assist the political subdivision in adopting land use assumptions;

(2) review the capital improvements plan and file written comments;

(3) monitor and evaluate implementation of the capital improvements plan;

(4) file semiannual reports with respect to the progress of the capital improvements plan and report to the political subdivision any perceived inequities in implementing the plan or imposing the impact fee; and

(5) advise the political subdivision of the need to update or revise the land use assumptions, capital improvements plan, and impact fee.

(d) The political subdivision shall make available to the advisory committee any professional reports with respect to developing and implementing the capital improvements plan.

(e) The governing body of the political subdivision shall adopt procedural rules for the advisory committee to follow in carrying out its duties.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

SUBCHAPTER D. OTHER PROVISIONS

Sec. 395.071. DUTIES TO BE PERFORMED WITHIN TIME LIMITS.

If the governing body of the political subdivision does not perform a duty imposed under this chapter within the prescribed period, a person who has paid an impact fee or an owner of land on which an impact fee has been paid has the right to present a written request to the governing body of the political subdivision stating the nature of the unperformed duty and requesting that it be performed within 60 days after the date of the request. If the governing body of the political subdivision finds that the duty is required under this chapter and is late in being performed, it shall cause the duty to commence within 60 days after the date of the request and continue until completion.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.072. RECORDS OF HEARINGS.

A record must be made of any public hearing provided for by this chapter. The record shall be maintained and be made available for public inspection by the political subdivision for at least 10 years after the date of the hearing.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.073. CUMULATIVE EFFECT OF STATE AND LOCAL RESTRICTIONS.

Any state or local restrictions that apply to the imposition of an impact fee in a political subdivision where an impact fee is proposed are cumulative with the restrictions in this chapter.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.074. PRIOR IMPACT FEES REPLACED BY FEES UNDER THIS CHAPTER.

An impact fee that is in place on June 20, 1987, must be replaced by an impact fee made under this chapter on or before June 20, 1990. However, any political subdivision having an impact fee that has not been replaced under this chapter on or before June 20, 1988, is liable to any party who, after June 20, 1988, pays an impact fee that exceeds the maximum permitted under Subchapter B by more than 10 percent for an amount equal to two times the difference between the maximum impact fee allowed and the actual impact fee imposed, plus reasonable attorney's fees and court costs.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.075. NO EFFECT ON TAXES OR OTHER CHARGES.

This chapter does not prohibit, affect, or regulate any tax, fee, charge, or assessment specifically authorized by state law.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.076. MORATORIUM ON DEVELOPMENT PROHIBITED.

A moratorium may not be placed on new development for the purpose of awaiting the completion of all or any part of the process necessary to develop, adopt, or update land use assumptions, a capital improvements plan, or an impact fee.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 441, Sec. 2, eff. Sept. 1, 2001.

Sec. 395.077. APPEALS.

(a) A person who has exhausted all administrative remedies within the political subdivision and who is aggrieved by a final decision is entitled to trial de novo under this chapter.

(b) A suit to contest an impact fee must be filed within 90 days after the date of adoption of the ordinance, order, or resolution establishing the impact fee.

(c) Except for roadway facilities, a person who has paid an impact fee or an owner of property on which an impact fee has been paid is entitled to specific performance of the services by the political subdivision for which the fee was paid.

(d) This section does not require construction of a specific facility to provide the services.

(e) Any suit must be filed in the county in which the major part of the land area of the political subdivision is located. A successful litigant shall be entitled to recover reasonable attorney's fees and court costs.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.078. SUBSTANTIAL COMPLIANCE WITH NOTICE REQUIREMENTS.

An impact fee may not be held invalid because the public notice requirements were not complied with if compliance was substantial and in good faith.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.079. IMPACT FEE FOR STORM WATER, DRAINAGE, AND FLOOD CONTROL IN POPULOUS COUNTY.

(a) Any county that has a population of 3.3 million or more or that borders a county with a population of 3.3 million or more, and any district or authority created under Article XVI, Section 59, of the Texas Constitution within any such county that is authorized to provide storm water, drainage, and flood control facilities, is authorized to impose impact fees to provide storm water, drainage, and flood control improvements necessary to accommodate new development.

(b) The imposition of impact fees authorized by Subsection (a) is exempt from the requirements of Sections 395.025, 395.052-395.057, and 395.074 unless the political subdivision proposes to increase the impact fee.

(c) Any political subdivision described by Subsection (a) is authorized to pledge or otherwise contractually obligate all or part of the impact fees to the payment of principal and interest on bonds, notes, or other obligations issued or incurred by or on behalf of the political subdivision and to the payment of any other contractual obligations.

(d) An impact fee adopted by a political subdivision under Subsection (a) may not be reduced if:

(1) the political subdivision has pledged or otherwise contractually obligated all or part of the impact fees to the payment of principal and interest on bonds, notes, or other obligations issued by or on behalf of the political subdivision; and

(2) the political subdivision agrees in the pledge or contract not to reduce the impact fees during the term of the bonds, notes, or other contractual obligations.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 107, eff. Sept. 1, 2001.

Sec. 395.080. CHAPTER NOT APPLICABLE TO CERTAIN WATER-RELATED SPECIAL DISTRICTS.

(a) This chapter does not apply to impact fees, charges, fees, assessments, or contributions:

(1) paid by or charged to a district created under Article XVI, Section 59, of the Texas Constitution to another district created under that constitutional provision if both districts are required by law to obtain approval of their bonds by the Texas Natural Resource Conservation Commission; or

(2) charged by an entity if the impact fees, charges, fees, assessments, or contributions are approved by the Texas Natural Resource Conservation Commission.

(b) Any district created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution may petition the Texas Natural Resource Conservation Commission for approval of any proposed impact fees, charges, fees, assessments, or contributions. The commission shall adopt rules for reviewing the petition and may charge the petitioner fees adequate to cover the cost of processing and considering the petition. The rules shall require notice substantially the same as that required by this chapter for the adoption of impact fees and shall afford opportunity for all affected parties to participate.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.257, eff. Sept. 1, 1995.

Sec. 395.081. FEES FOR ADJOINING LANDOWNERS IN CERTAIN MUNICIPALITIES.

(a) This section applies only to a municipality with a population of 115,000 or less that constitutes more than three-fourths of the population of the county in which the majority of the area of the municipality is located.

(b) A municipality that has not adopted an impact fee under this chapter that is constructing a capital improvement, including sewer or waterline or drainage or roadway facilities, from the municipality to a development located within or outside the municipality's boundaries, in its discretion, may allow a landowner whose land adjoins the capital improvement or is within a specified distance from the capital improvement, as determined by the governing body of the municipality, to connect to the capital improvement if:

(1) the governing body of the municipality has adopted a finding under Subsection (c); and

(2) the landowner agrees to pay a proportional share of the cost of the capital improvement as determined by the governing body of the municipality and agreed to by the landowner.

(c) Before a municipality may allow a landowner to connect to a capital improvement under Subsection (b), the municipality shall adopt a finding that the municipality will benefit from allowing the landowner to connect to the capital improvement. The finding shall describe the benefit to be received by the municipality.

(d) A determination of the governing body of a municipality, or its officers or employees, under this section is a discretionary function of the municipality and the municipality and its officers or employees are not liable for a determination made under this section.

Added by Acts 1997, 75th Leg., ch. 1150, Sec. 1, eff. June 19, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1043, Sec. 5, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163, Sec. 100, eff. September 1, 2011.

~~**Sec. 395.082. CERTIFICATION OF COMPLIANCE REQUIRED.**~~

[Not in current on-line version, but haven't been able to identify what bill repealed it.]

~~(a) A political subdivision that imposes an impact fee shall submit a written certification verifying compliance with this chapter to the attorney general each year not later than the last day of the political subdivision's fiscal year.~~

~~(b) The certification must be signed by the presiding officer of the governing body of a political subdivision and include a statement that reads substantially similar to the following: "This statement certifies compliance with Chapter 395, Local Government Code."~~

~~(c) A political subdivision that fails to submit a certification as required by this section is liable to the state for a civil penalty in an amount equal to 10 percent of the amount of the impact fees erroneously charged. The attorney general shall collect the civil penalty and deposit the amount collected to the credit of the housing trust fund.~~

~~Added by Acts 2001, 77th Leg., ch. 345, Sec. 8, eff. Sept. 1, 2001.~~

AN ACT relating to parkland dedication for multifamily, hotel, and motel property development by certain municipalities; authorizing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.

Chapter 212, Local Government Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. MULTIFAMILY, HOTEL, AND MOTEL PARKLAND DEDICATION: MUNICIPALITIES WITH POPULATION OF MORE THAN 800,000

Sec. 212.201. DEFINITIONS. In this subchapter:

(1) "Affordable dwelling unit" means a residential unit offered at a below market rate for rent or sale under a municipal, county, state, or federal program.

(2) "Consumer price index" means the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, published by the Bureau of Labor Statistics of the United States Department of Labor or its successor in function.

(3) "Improvement" and "market value" have the meanings assigned by Section 1.04, Tax Code.

(4) "Land value" means the market value of land per acre, not including an improvement to the land.

(5) "Median family income" means the United States Census Bureau's most recent American Community Survey's five-year estimate of median family income for all families within the applicable municipality.

(6) "Multifamily unit" means a residential unit other than a detached single-family or two-family dwelling.

(7) "Parkland" means an area that is designated as a park for the purpose of recreational activity. The term includes an open space, a recreational facility, and a trail.

(8) "Parkland dedication" means the fee simple transfer of land or the dedication of an easement to a municipality for nonexclusive use as parkland.

(9) "Parkland dedication fee" means a fee imposed by a municipality on a landowner for the acquisition, development, repair, and maintenance of parkland.

(10) "Plan" means a subdivision development plan, subdivision plan, site plan, land development plan, and site development plan each proposing the development of multifamily, hotel, or motel units.

Sec. 212.202. APPLICABILITY.

This subchapter applies only to a municipality with a population of more than 800,000.

Sec. 212.203. CONSTRUCTION.

This subchapter may not be construed to prohibit a municipality from requiring by ordinance a landowner to dedicate a portion of the landowner's property for parkland use, impose a parkland dedication fee, or both require the dedication and impose the fee for the development of single-family or two-family uses.

Sec. 212.204. EXCLUSIVE AUTHORITY; LIMITATION.

(a) Notwithstanding any other law, a municipality has exclusive authority within its boundaries to require the dedication of parkland, impose a parkland dedication fee, or both require the dedication and impose the fee. A municipality may not delegate that authority to another political subdivision.

(b) A municipality may only exercise its authority under this section through a plan application in accordance with this subchapter.

Sec. 212.205. PARKLAND DEDICATION, FEE, OR COMBINATION.

(a) A municipality may require a landowner to dedicate a portion of the landowner's property for parkland use, impose a parkland dedication fee, or both require the dedication and impose the fee under a plan application filed under this subchapter by:

(1) paying a fee set in accordance with Section 212.210(b) or 212.211(b), as applicable; or

(2) dedicating a portion up to the maximum size authorized under Section 212.208 and paying a reduced fee set in accordance with Section 212.210(d) or 212.211(c), as applicable.

(b) A municipality may allow a landowner to elect a parkland dedication, a parkland dedication fee, or a dedication and fee under Subsection (a).

Sec. 212.206. REQUEST FOR PARKLAND DEDICATION DETERMINATION.

(a) A landowner may, at the landowner's sole discretion, make a written request to a municipality that the municipality make a timely determination of the dedication amount the municipality will impose under the municipality's parkland dedication requirements as applied to the landowner's property being considered for development.

(b) A municipality may make a reasonable written request to the landowner for additional information that is:

(1) publicly and readily available; and

(2) necessary to provide a determination under this section.

(c) A municipality shall respond in writing to a request made under Subsection (a) not later than the 30th day after the date the municipality receives a completed request. If the municipality fails to respond in accordance with this subsection, the municipality may not require a parkland dedication as a condition of approval of a proposed plan or application for property that is the subject of the request.

(d) A parkland dedication determination issued under this section:

(1) is a legally binding determination of the amount of the landowner's parkland dedication for the property that is the subject of the determination; and

(2) is applicable to the property that is the subject of the determination for a period that is the lesser of:

(A) two years; or

(B) the time between the date the determination is issued and the date a plan application is filed that uses or relies on the determination.

(e) A landowner may release in writing a municipality from a determination made under this section.

Sec. 212.207. PARKLAND DEDICATION AUTHORITY.

(a) A municipality may not require a parkland dedication, impose a parkland dedication fee, or both require the dedication and impose the fee for any commercial use. For the purpose of this section, a commercial use does not include a multifamily, hotel, or motel use.

(b) If a plan application submitted to a municipality proposes development of the land subject to the application that includes both multifamily, hotel, or motel and commercial uses, the municipality shall determine the amount of a parkland dedication based only on the pro rata portion of the land proposed for multifamily, hotel, or motel use.

Sec. 212.208. LIMITATION ON PARKLAND DEDICATION AMOUNT.

A municipality may not require a landowner to dedicate as parkland under this subchapter more than 10 percent, without adjustment or disqualification for impairment, of the gross site area of the land subject to a plan application.

Sec. 212.209. INITIAL REQUIREMENTS FOR DETERMINING FEES.

(a) For purposes of determining the amount of a fee imposed under this section, the governing body of a municipality, after providing at least 30 days' public notice and holding a public hearing, shall by official action designate all territory within its municipal boundaries as a suburban area, urban area, or central business district area. The governing body may use the same designation for multiple areas in the municipality. The governing body may amend a designation only during the adoption or amendment of a municipal comprehensive plan under Chapter 213.

(b) Not later than the 10th day after the date the municipality designates its territory under Subsection (a), the municipality shall notify each appraisal district in which the municipality is wholly or partly located of the designation.

(c) Once every 10 years, each appraisal district in which the municipality is wholly or partly located shall calculate and provide to the municipality the average land value for each area or portion of an area designated by the municipality under Subsection (a) that is located in the district.

(d) If multiple appraisal districts calculate an average land value for different portions of an area designated under Subsection (a), the municipality shall determine the area's total average land value by:

(1) multiplying each district's calculated value for the portion located in the district by the percentage, expressed as a fraction, that the portion is to the total area; and

(2) adding the resulting amounts.

(e) In each year other than the year in which an appraisal district calculates average land values under Subsection (c), a municipality shall calculate the average land value for each area designated under Subsection (a) by multiplying the previous year's average land value for the area by one plus the average consumer price index for each month of the previous year.

(f) A municipality shall set the municipality's dwelling unit factor, which reflects the number of parkland acres for each dwelling unit proposed by a plan application. The factor may not be more than:

(1) .005 for multifamily units; and

(2) .004 for rooms in a hotel or motel ordinarily used for sleeping.

(g) A municipality shall set the municipality's density factor, which reflects the diminishing expectation of parkland acres per dwelling unit in increasingly dense urban environments, for each area designated by the municipality under Subsection (a). The density factor may not be less than:

(1) one for the suburban area;

(2) four for the urban area; and

(3) 40 for the central business district area.

Sec. 212.210. GENERAL REQUIREMENTS FOR CALCULATION OF FEES.

(a) This section applies only to a municipality to which Section 212.211 does not apply.

(b) A municipality shall determine the amount of a fee imposed under Section 212.205(a)(1) for land subject to a plan application by:

(1) adding, as appropriate:

(A) the product of the number of multifamily units proposed by the plan by the dwelling unit factor prescribed by Section 212.209(f)(1); and

(B) the product of the number of hotel and motel rooms ordinarily used for sleeping proposed by the plan by the dwelling unit factor prescribed by Section 212.209(f)(2);

(2) multiplying the sum calculated under Subdivision (1) by the average land value for the area in which the land is located; and

(3) dividing the product calculated under Subdivision (2) by the applicable density factor.

(c) For purposes of Subsection (b)(1), a municipality shall exclude from a plan application the number of affordable dwelling units proposed by the plan.

(d) A municipality shall determine the amount of a fee imposed under Section 212.205(a)(2) for land subject to a plan application by:

(1) calculating the amount of the fee for the land under Subsection (b); and

(2) subtracting from the amount calculated under Subdivision (1) the product of the land value applicable to the land and the number of acres dedicated.

(e) If a calculation made under Subsection (d) results in a negative number, the applicable landowner is entitled to receive from the applicable municipality the amount equal to the positive difference between the calculated amount and zero. The municipality shall pay that amount to the landowner at the time of transfer of fee simple title or the recording of the easement.

Sec. 212.211. REQUIREMENTS CALCULATION OF FEES FOR MUNICIPALITIES WITH LOW FEES.

(a) This section applies only to a municipality that after August 31, 2023, requires a parkland dedication fee for a multifamily, hotel, or motel development in an amount, calculated on a per dwelling unit basis, not greater than two percent of the median family income.

(b) A municipality to which this section applies may set a parkland dedication fee. If the municipality elects to set the fee in an amount greater than two percent of the municipality's median family income:

(1) this section no longer applies to the municipality; and

(2) the municipality must set the fee in accordance with Section 212.210.

(c) A municipality shall determine the amount of a fee imposed under Section 212.205(a)(2) for land subject to a plan application by subtracting from the amount of the fee set under Subsection (b) the product of the land value applicable to the land and the number of acres dedicated.

(d) If a calculation made under Subsection (c) results in a negative number, the applicable landowner is entitled to receive from the applicable municipality the amount equal to the positive difference between the calculated amount and zero. The municipality shall pay that amount to the landowner at the time of transfer of fee simple title or the recording of the easement.

Sec. 212.212. COLLECTION OF FEES.

A municipality shall provide a landowner a written determination of fees owed under this subchapter before approving a plan application but may only collect a fee authorized under this subchapter as a precondition to the issuance of a final certificate of occupancy.

Sec. 212.213. APPEAL.

(a) A landowner may appeal a determination made by a municipal department, board, or commission regarding any element of a parkland dedication requirement, including amount, orientation, or suitability, as that element applies to the landowner's property, to the municipal planning commission or, if the municipality has no planning commission, the governing body of the municipality. The appeal must include a requested adjudication of the issue in controversy.

(b) A landowner may appeal a municipal planning commission's determination under Subsection (a) to the governing body of the municipality.

(c) In an appeal under this section, a municipal planning commission or governing body of a municipality may uphold, reverse, or modify a parkland dedication requirement as applied to the landowner making the appeal.

(d) A municipal planning commission or governing body of a municipality shall uphold, reverse, or modify a parkland dedication requirement that is the subject of an appeal not later than the 60th day after the date the appeal is filed with the commission or governing body. If the commission or governing body fails to act in accordance with this subsection, the parkland dedication requirement is considered resolved in favor of the landowner's requested adjudication.

SECTION 2.

(a) Not later than December 1, 2023, each municipality to which Subchapter H, Chapter 212, Local Government Code, as added by this Act, applies shall:

(1) effective January 1, 2024:

(A) designate the areas of the municipality as required by Section 212.209(a), Local Government Code, as added by this Act; and

(B) set the municipality's dwelling unit and density factors, as required by Sections 212.209(f) and (g), Local Government Code, as added by this Act; and

(2) provide to each appraisal district in which the municipality is wholly or partly located the location of each area designated under Subdivision (1)(A) of this subsection in a manner sufficient to allow the appraisal district to make the calculations required by Subsection (b) of this section.

(b) Not later than January 1, 2024, each appraisal district that appraises property located in a municipality described by Subsection (a) of this section shall calculate and provide to the municipality the average land values as required by Section 212.209(c), Local Government Code, as added by this Act.

SECTION 3.

Subchapter H, Chapter 212, Local Government Code, as added by this Act, applies only to a plan application filed on or after January 1, 2024.

SECTION 4.

This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.

Utah Impact Fees Act

[downloaded January 21, 2012, as amended by HB 3002, 3rd special session of the Utah Legislature, 2016 (signed by governor July 17, 2016), prohibiting the assessment of impact fees on the state fair park]

11-36a-101. Title.

This chapter is known as the "Impact Fees Act."

11-36a-102. Definitions.

As used in this chapter:

(1) (a) "Affected entity" means each county, municipality, local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Chapter 13, Interlocal Cooperation Act, and specified public utility:

(i) whose services or facilities are likely to require expansion or significant modification because of the facilities proposed in the proposed impact fee facilities plan; or

(ii) that has filed with the local political subdivision or private entity a copy of the general or long-range plan of the county, municipality, local district, special service district, school district, interlocal cooperation entity, or specified public utility.

(b) "Affected entity" does not include the local political subdivision or private entity that is required under Section 11-36a-501 to provide notice.

(2) "Charter school" includes:

(a) an operating charter school;

(b) an applicant for a charter school whose application has been approved by a chartering entity as provided in Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

(c) an entity that is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.

(3) "Development activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land that creates additional demand and need for public facilities.

(4) "Development approval" means:

(a) except as provided in Subsection (4)(b), any written authorization from a local political subdivision that authorizes the commencement of development activity;

(b) development activity, for a public entity that may develop without written authorization from a local political subdivision;

(c) a written authorization from a public water supplier, as defined in Section 73-1-4, or a private water company:

(i) to reserve or provide:

(A) a water right;

(B) a system capacity; or

(C) a distribution facility; or

(ii) to deliver for a development activity:

(A) culinary water; or

(B) irrigation water; or

(d) a written authorization from a sanitary sewer authority, as defined in Section 10-9a-103:

(i) to reserve or provide:
(A) sewer collection capacity; or
(B) treatment capacity; or
(ii) to provide sewer service for a development activity.

(5) "Enactment" means:
(a) a municipal ordinance, for a municipality;
(b) a county ordinance, for a county; and
(c) a governing board resolution, for a local district, special service district, or private entity.

(6) "Encumber" means:
(a) a pledge to retire a debt; or
(b) an allocation to a current purchase order or contract.

(7) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance to connect to a gas, water, sewer, storm water, power, or other utility system of a municipality, county, local district, special service district, or private entity.

(8) (a) "Impact fee" means a payment of money imposed upon new development activity as a condition of development approval to mitigate the impact of the new development on public infrastructure.
(b) "Impact fee" does not mean a tax, a special assessment, a building permit fee, a hookup fee, a fee for project improvements, or other reasonable permit or application fee.

(9) "Impact fee analysis" means the written analysis of each impact fee required by Section 11-36a-303.

(10) "Impact fee facilities plan" means the plan required by Section 11-36a-301.

(11) (a) "Local political subdivision" means a county, a municipality, a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special service district under Title 17D, Chapter 1, Special Service District Act.
(b) "Local political subdivision" does not mean a school district, whose impact fee activity is governed by Section 53A-20-100.5.

(12) "Private entity" means an entity with private ownership that provides culinary water that is required to be used as a condition of development.

(13) (a) "Project improvements" means site improvements and facilities that are:
(i) planned and designed to provide service for development resulting from a development activity;
(ii) necessary for the use and convenience of the occupants or users of development resulting from a development activity; and
(iii) not identified or reimbursed as a system improvement.
(b) "Project improvements" does not mean system improvements.

(14) "Proportionate share" means the cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any development activity.

(15) "Public facilities" means only the following impact fee facilities that have a life expectancy of 10 or more years and are owned or operated by or on behalf of a local political subdivision or private entity:
(a) water rights and water supply, treatment, and distribution facilities;
(b) wastewater collection and treatment facilities;
(c) storm water, drainage, and flood control facilities;
(d) municipal power facilities;
(e) roadway facilities;

(f) parks, recreation facilities, open space, and trails;
(g) public safety facilities; or
(h) environmental mitigation as provided in Section 11-36a-205.

(16) (a) "Public safety facility" means:
(i) a building constructed or leased to house police, fire, or other public safety entities; or
(ii) a fire suppression vehicle costing in excess of $500,000.
(b) "Public safety facility" does not mean a jail, prison, or other place of involuntary incarceration.

(17) (a) "Roadway facilities" means a street or road that has been designated on an officially adopted subdivision plat, roadway plan, or general plan of a political subdivision, together with all necessary appurtenances.
(b) "Roadway facilities" includes associated improvements to a federal or state roadway only when the associated improvements:
(i) are necessitated by the new development; and
(ii) are not funded by the state or federal government.
(c) "Roadway facilities" does not mean federal or state roadways.

(18) (a) "Service area" means a geographic area designated by a local political subdivision on the basis of sound planning or engineering principles in which a defined set of public facilities provides service within the area.
(b) "Service area" may include the entire local political subdivision.

(19) "Specified public agency" means:
(a) the state;
(b) a school district; or
(c) a charter school.

(20) (a) "System improvements" means:
(i) existing public facilities that are:
(A) identified in the impact fee analysis under Section 11-36a-304; and
(B) designed to provide services to service areas within the community at large; and
(ii) future public facilities identified in the impact fee analysis under Section 11-36a-304 that are intended to provide services to service areas within the community at large.
(b) "System improvements" does not mean project improvements.

11-36a-201. Impact fees.

(1) A local political subdivision or private entity shall ensure that any imposed impact fees comply with the requirements of this chapter.

(2) A local political subdivision and private entity may establish impact fees only for those public facilities defined in Section 11-36a-102.

(3) Nothing in this chapter may be construed to repeal or otherwise eliminate an impact fee in effect on the effective date of this chapter that is pledged as a source of revenues to pay bonded indebtedness that was incurred before the effective date of this chapter.

11-36a-202. Prohibitions on impact fees.

(1) A local political subdivision or private entity may not:
(a) impose an impact fee to:
(i) cure deficiencies in a public facility serving existing development;
(ii) raise the established level of service of a public facility serving existing development;

(iii) recoup more than the local political subdivision's or private entity's costs actually incurred for excess capacity in an existing system improvement; or

(iv) include an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with:

(A) generally accepted cost accounting practices; and

(B) the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement;

(b) delay the construction of a school or charter school because of a dispute with the school or charter school over impact fees; or

(c) impose or charge any other fees as a condition of development approval unless those fees are a reasonable charge for the service provided.

(2) (a) Notwithstanding any other provision of this chapter, a political subdivision or private entity may not impose an impact fee:

(i) on residential components of development to pay for a public safety facility that is a fire suppression vehicle;

(ii) on a school district or charter school for a park, recreation facility, open space, or trail;

(iii) on a school district or charter school unless:

(A) the development resulting from the school district's or charter school's development activity directly results in a need for additional system improvements for which the impact fee is imposed; and

(B) the impact fee is calculated to cover only the school district's or charter school's proportionate share of the cost of those additional system improvements; or

(iv) to the extent that the impact fee includes a component for a law enforcement facility, on development activity for:

(A) the Utah National Guard;

(B) the Utah Highway Patrol; or

(C) a state institution of higher education that has its own police force.

(D) on development activity on the state fair park, as defined in Section 63H-6-102

(b) (i) Notwithstanding any other provision of this chapter, a political subdivision or private entity may not impose an impact fee on development activity that consists of the construction of a school, whether by a school district or a charter school, if:

(A) the school is intended to replace another school, whether on the same or a different parcel;

(B) the new school creates no greater demand or need for public facilities than the school or school facilities, including any portable or modular classrooms that are on the site of the replaced school at the time that the new school is proposed; and

(C) the new school and the school being replaced are both within the boundary of the local political subdivision or the jurisdiction of the private entity.

(ii) If the imposition of an impact fee on a new school is not prohibited under Subsection (2)(b)(i) because the new school creates a greater demand or need for public facilities than the school being replaced, the impact fee shall be based only on the demand or need that the new school creates for public facilities that exceeds the demand or need that the school being replaced creates for those public facilities.

(c) Notwithstanding any other provision of this chapter, a political subdivision or private entity may impose an impact fee for a road facility on the state only if and to the extent that:

(i) the state's development causes an impact on the road facility; and

(ii) the portion of the road facility related to an impact fee is not funded by the state or by the federal government.

(3) Notwithstanding any other provision of this chapter, a local political subdivision may impose and collect impact fees on behalf of a school district if authorized by Section 53A-20-100.5.

11-36a-203. Private entity assessment of impact fees -- Charges for water rights, physical infrastructure -- Notice -- Audit.

(1) A private entity:
(a) shall comply with the requirements of this chapter before imposing an impact fee; and
(b) except as otherwise specified in this chapter, is subject to the same requirements of this chapter as a local political subdivision.

(2) A private entity may only impose a charge for water rights or physical infrastructure necessary to provide water or sewer facilities by imposing an impact fee.

(3) Where notice and hearing requirements are specified, a private entity shall comply with the notice and hearing requirements for local districts.

(4) A private entity that assesses an impact fee under this chapter is subject to the audit requirements of Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.

11-36a-204. Other names for impact fees.

(1) A fee that meets the definition of impact fee under Section 11-36a-102 is an impact fee subject to this chapter, regardless of what term the local political subdivision or private entity uses to refer to the fee.

(2) A local political subdivision or private entity may not avoid application of this chapter to a fee that meets the definition of an impact fee under Section 11-36a-102 by referring to the fee by another name.

11-36a-205. Environmental mitigation impact fees.

Notwithstanding the requirements and prohibitions of this chapter, a local political subdivision may impose and assess an impact fee for environmental mitigation when:

(1) the local political subdivision has formally agreed to fund a Habitat Conservation Plan to resolve conflicts with the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531, et seq. or other state or federal environmental law or regulation;

(2) the impact fee bears a reasonable relationship to the environmental mitigation required by the Habitat Conservation Plan; and

(3) the legislative body of the local political subdivision adopts an ordinance or resolution:
(a) declaring that an impact fee is required to finance the Habitat Conservation Plan;
(b) establishing periodic sunset dates for the impact fee; and
(c) requiring the legislative body to:
(i) review the impact fee on those sunset dates;
(ii) determine whether or not the impact fee is still required to finance the Habitat Conservation Plan; and
(iii) affirmatively reauthorize the impact fee if the legislative body finds that the impact fee must remain in effect.

11-36a-301. Impact fee facilities plan.

(1) Before imposing an impact fee, each local political subdivision or private entity shall, except as provided in Subsection (3), prepare an impact fee facilities plan to determine the public facilities required to serve development resulting from new development activity.

(2) A municipality or county need not prepare a separate impact fee facilities plan if the general plan required by Section 10-9a-401 or 17-27a-401, respectively, contains the elements required by Section 11-36a-302.

(3) (a) A local political subdivision with a population, or serving a population, of less than 5,000 as of the last federal census need not comply with the impact fee facilities plan requirements of this part, but shall ensure that:

(i) the impact fees that the local political subdivision imposes are based upon a reasonable plan; and

(ii) each applicable notice required by this chapter is given.

(b) Subsection (3)(a) does not apply to a private entity.

11-36a-302. Impact fee facilities plan requirements -- Limitations -- School district or charter school.

(1) An impact fee facilities plan shall identify:

(a) demands placed upon existing public facilities by new development activity; and

(b) the proposed means by which the local political subdivision will meet those demands.

(2) In preparing an impact fee facilities plan, each local political subdivision shall generally consider all revenue sources, including impact fees and anticipated dedication of system improvements, to finance the impacts on system improvements.

(3) A local political subdivision or private entity may only impose impact fees on development activities when the local political subdivision's or private entity's plan for financing system improvements establishes that impact fees are necessary to achieve an equitable allocation to the costs borne in the past and to be borne in the future, in comparison to the benefits already received and yet to be received.

(4) (a) Subject to Subsection (4)(c), the impact fee facilities plan shall include a public facility for which an impact fee may be charged or required for a school district or charter school if the local political subdivision is aware of the planned location of the school district facility or charter school:

(i) through the planning process; or

(ii) after receiving a written request from a school district or charter school that the public facility be included in the impact fee facilities plan.

(b) If necessary, a local political subdivision or private entity shall amend the impact fee facilities plan to reflect a public facility described in Subsection (4)(a).

(c) (i) In accordance with Subsections 10-9a-305(4) and 17-27a-305(4), a local political subdivision may not require a school district or charter school to participate in the cost of any roadway or sidewalk.

(ii) Notwithstanding Subsection (4)(c)(i), if a school district or charter school agrees to build a roadway or sidewalk, the roadway or sidewalk shall be included in the impact fee facilities plan if the local jurisdiction has an impact fee facilities plan for roads and sidewalks.

11-36a-303. Impact fee analysis.

(1) Subject to the notice requirements of Section 11-36a-504, each local political subdivision or private entity intending to impose an impact fee shall prepare a written analysis of each impact fee.

(2) Each local political subdivision or private entity that prepares an impact fee analysis under Subsection (1) shall also prepare a summary of the impact fee analysis designed to be understood by a lay person.

11-36a-304. Impact fee analysis requirements.

(1) An impact fee analysis shall:

(a) identify the anticipated impact on or consumption of any existing capacity of a public facility by the anticipated development activity;

(b) identify the anticipated impact on system improvements required by the anticipated development activity to maintain the established level of service for each public facility;
(c) subject to Subsection (2), demonstrate how the anticipated impacts described in Subsections (1)(a) and (b) are reasonably related to the anticipated development activity;
(d) estimate the proportionate share of:
(i) the costs for existing capacity that will be recouped; and
(ii) the costs of impacts on system improvements that are reasonably related to the new development activity; and
(e) based on the requirements of this chapter, identify how the impact fee was calculated.

(2) In analyzing whether or not the proportionate share of the costs of public facilities are reasonably related to the new development activity, the local political subdivision or private entity, as the case may be, shall identify, if applicable:
(a) the cost of each existing public facility that has excess capacity to serve the anticipated development resulting from the new development activity;
(b) the cost of system improvements for each public facility;
(c) other than impact fees, the manner of financing for each public facility, such as user charges, special assessments, bonded indebtedness, general taxes, or federal grants;
(d) the relative extent to which development activity will contribute to financing the excess capacity of and system improvements for each existing public facility, by such means as user charges, special assessments, or payment from the proceeds of general taxes;
(e) the relative extent to which development activity will contribute to the cost of existing public facilities and system improvements in the future;
(f) the extent to which the development activity is entitled to a credit against impact fees because the development activity will dedicate system improvements or public facilities that will offset the demand for system improvements, inside or outside the proposed development;
(g) extraordinary costs, if any, in servicing the newly developed properties; and
(h) the time-price differential inherent in fair comparisons of amounts paid at different times.

11-36a-305. Calculating impact fees.

(1) In calculating an impact fee, a local political subdivision or private entity may include:
(a) the construction contract price;
(b) the cost of acquiring land, improvements, materials, and fixtures;
(c) the cost for planning, surveying, and engineering fees for services provided for and directly related to the construction of the system improvements; and
(d) for a political subdivision, debt service charges, if the political subdivision might use impact fees as a revenue stream to pay the principal and interest on bonds, notes, or other obligations issued to finance the costs of the system improvements.

(2) In calculating an impact fee, each local political subdivision or private entity shall base amounts calculated under Subsection (1) on realistic estimates, and the assumptions underlying those estimates shall be disclosed in the impact fee analysis.

11-36a-306. Certification of impact fee analysis.

(1) An impact fee facilities plan shall include a written certification from the person or entity that prepares the impact fee facilities plan that states the following:
"I certify that the attached impact fee facilities plan:
1. includes only the costs of public facilities that are:
a. allowed under the Impact Fees Act; and
b. actually incurred; or
c. projected to be incurred or encumbered within six years after the day on which each impact fee is paid;

2. does not include:

a. costs of operation and maintenance of public facilities;

b. costs for qualifying public facilities that will raise the level of service for the facilities, through impact fees, above the level of service that is supported by existing residents;

c. an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with generally accepted cost accounting practices and the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement; and

3. complies in each and every relevant respect with the Impact Fees Act."

(2) An impact fee analysis shall include a written certification from the person or entity that prepares the impact fee analysis which states as follows:

"I certify that the attached impact fee analysis:

1. includes only the costs of public facilities that are:

a. allowed under the Impact Fees Act; and

b. actually incurred; or

c. projected to be incurred or encumbered within six years after the day on which each impact fee is paid;

2. does not include:

a. costs of operation and maintenance of public facilities;

b. costs for qualifying public facilities that will raise the level of service for the facilities, through impact fees, above the level of service that is supported by existing residents;

c. an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with generally accepted cost accounting practices and the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement;

3. offsets costs with grants or other alternate sources of payment; and

4. complies in each and every relevant respect with the Impact Fees Act."

11-36a-401. Impact fee enactment.

(1) (a) A local political subdivision or private entity wishing to impose impact fees shall pass an impact fee enactment in accordance with Section 11-36a-402.

(b) An impact fee imposed by an impact fee enactment may not exceed the highest fee justified by the impact fee analysis.

(2) An impact fee enactment may not take effect until 90 days after the day on which the impact fee enactment is approved.

11-36a-402. Required provisions of impact fee enactment.

(1) A local political subdivision or private entity shall ensure, in addition to the requirements described in Subsections (2) and (3), that an impact fee enactment contains:

(a) a provision establishing one or more service areas within which the local political subdivision or private entity calculates and imposes impact fees for various land use categories;

(b) (i) a schedule of impact fees for each type of development activity that specifies the amount of the impact fee to be imposed for each type of system improvement; or

(ii) the formula that the local political subdivision or private entity, as the case may be, will use to calculate each impact fee;

(c) a provision authorizing the local political subdivision or private entity, as the case may be, to adjust the standard impact fee at the time the fee is charged to:

(i) respond to:

(A) unusual circumstances in specific cases; or

(B) a request for a prompt and individualized impact fee review for the development activity of the state, a school district, or a charter school and an offset or credit for a public facility for which an impact fee has been or will be collected;

and

(ii) ensure that the impact fees are imposed fairly; and

(d) a provision governing calculation of the amount of the impact fee to be imposed on a particular development that permits adjustment of the amount of the impact fee based upon studies and data submitted by the developer.

(2) A local political subdivision or private entity shall ensure that an impact fee enactment allows a developer, including a school district or a charter school, to receive a credit against or proportionate reimbursement of an impact fee if the developer:

(a) dedicates land for a system improvement;

(b) builds and dedicates some or all of a system improvement; or

(c) dedicates a public facility that the local political subdivision or private entity and the developer agree will reduce the need for a system improvement.

(3) A local political subdivision or private entity shall include a provision in an impact fee enactment that requires a credit against impact fees for any dedication of land for, improvement to, or new construction of, any system improvements provided by the developer if the facilities:

(a) are system improvements; or

(b) (i) are dedicated to the public; and

(ii) offset the need for an identified system improvement.

11-36a-403. Other provisions of impact fee enactment.

(1) A local political subdivision or private entity may include a provision in an impact fee enactment that:

(a) provides an impact fee exemption for:

(i) development activity attributable to:

(A) low income housing;

(B) the state;

(C) subject to Subsection (2), a school district; or

(D) subject to Subsection (2), a charter school; or

(ii) other development activity with a broad public purpose; and

(b) except for an exemption under Subsection (1)(a)(i)(A), establishes one or more sources of funds other than impact fees to pay for that development activity.

(2) An impact fee enactment that provides an impact fee exemption for development activity attributable to a school district or charter school shall allow either a school district or a charter school to qualify for the exemption on the same basis.

(3) An impact fee enactment that repeals or suspends the collection of impact fees is exempt from the notice requirements of Section 11-36a-504.

11-36a-501. Notice of intent to prepare an impact fee facilities plan.

(1) Before preparing or amending an impact fee facilities plan, a local political subdivision or private entity shall provide written notice of its intent to prepare or amend an impact fee facilities plan.

(2) A notice required under Subsection (1) shall:

(a) indicate that the local political subdivision or private entity intends to prepare or amend an impact fee facilities plan;

(b) describe or provide a map of the geographic area where the proposed impact fee facilities will be located; and

(c) subject to Subsection (3), be posted on the Utah Public Notice Website created under Section 63F-1-701.

(3) For a private entity required to post notice on the Utah Public Notice Website under Subsection (2)(c):

(a) the private entity shall give notice to the general purpose local government in which the private entity's private business office is located; and

(b) the general purpose local government described in Subsection (3)(a) shall post the notice on the Utah Public Notice Website.

11-36a-502. Notice to adopt or amend an impact fee facilities plan.

(1) If a local political subdivision chooses to prepare an independent impact fee facilities plan rather than include an impact fee facilities element in the general plan in accordance with Section 11-36a-301, the local political subdivision shall, before adopting or amending the impact fee facilities plan:

(a) give public notice, in accordance with Subsection (2), of the plan or amendment at least 10 days before the day on which the public hearing described in Subsection (1)(d) is scheduled;

(b) make a copy of the plan or amendment, together with a summary designed to be understood by a lay person, available to the public;

(c) place a copy of the plan or amendment and summary in each public library within the local political subdivision; and

(d) hold a public hearing to hear public comment on the plan or amendment.

(2) With respect to the public notice required under Subsection (1)(a):

(a) each municipality shall comply with the notice and hearing requirements of, and, except as provided in Subsection 11-36a-701(3)(b)(ii), receive the protections of Sections 10-9a-205 and 10-9a-801 and Subsection 10-9a-502(2);

(b) each county shall comply with the notice and hearing requirements of, and, except as provided in Subsection 11-36a-701(3)(b)(ii), receive the protections of Sections 17-27a-205 and 17-27a-801 and Subsection 17-27a-502(2); and

(c) each local district, special service district, and private entity shall comply with the notice and hearing requirements of, and receive the protections of, Section 17B-1-111.

(3) Nothing contained in this section or Section 11-36a-503 may be construed to require involvement by a planning commission in the impact fee facilities planning process.

11-36a-503. Notice of preparation of an impact fee analysis.

(1) Before preparing or contracting to prepare an impact fee analysis, each local political subdivision or, subject to Subsection (2), private entity shall post a public notice on the Utah Public Notice Website created under Section 63F-1-701.

(2) For a private entity required to post notice on the Utah Public Notice Website under Subsection (1):

(a) the private entity shall give notice to the general purpose local government in which the private entity's primary business is located; and

(b) the general purpose local government described in Subsection (2)(a) shall post the notice on the Utah Public Notice Website.

11-36a-504. Notice of intent to adopt impact fee enactment -- Hearing -- Protections.

(1) Before adopting an impact fee enactment:

(a) a municipality legislative body shall:

(i) comply with the notice requirements of Section 10-9a-205 as if the impact fee enactment were a land use ordinance;

(ii) hold a hearing in accordance with Section 10-9a-502 as if the impact fee enactment were a land use ordinance; and

(iii) except as provided in Subsection 11-36a-701(3)(b)(ii), receive the protections of Section 10-9a-801 as if the impact fee were a land use ordinance;

(b) a county legislative body shall:

(i) comply with the notice requirements of Section 17-27a-205 as if the impact fee enactment were a land use ordinance;

(ii) hold a hearing in accordance with Section 17-27a-502 as if the impact fee enactment were a land use ordinance; and

(iii) except as provided in Subsection 11-36a-701(3)(b)(ii), receive the protections of Section 17-27a-801 as if the impact fee were a land use ordinance;

(c) a local district or special service district shall:

(i) comply with the notice and hearing requirements of Section 17B-1-111; and

(ii) receive the protections of Section 17B-1-111;

(d) a local political subdivision shall at least 10 days before the day on which a public hearing is scheduled in accordance with this section:

(i) make a copy of the impact fee enactment available to the public; and

(ii) post notice of the local political subdivision's intent to enact or modify the impact fee, specifying the type of impact fee being enacted or modified, on the Utah Public Notice Website created under Section 63F-1-701; and

(e) a local political subdivision shall submit a copy of the impact fee analysis and a copy of the summary of the impact fee analysis prepared in accordance with Section 11-36a-303 on its website or to each public library within the local political subdivision.

(2) Subsection (1)(a) or (b) may not be construed to require involvement by a planning commission in the impact fee enactment process.

11-36a-601. Accounting of impact fees.

A local political subdivision that collects an impact fee shall:

(1) establish a separate interest bearing ledger account for each type of public facility for which an impact fee is collected;

(2) deposit a receipt for an impact fee in the appropriate ledger account established under Subsection (1);

(3) retain the interest earned on each fund or ledger account in the fund or ledger account;

(4) at the end of each fiscal year, prepare a report on each fund or ledger account showing:

(a) the source and amount of all money collected, earned, and received by the fund or ledger account; and

(b) each expenditure from the fund or ledger account; and

(5) produce a report that:

(a) identifies impact fee funds by the year in which they were received, the project from which the funds were collected, the impact fee projects for which the funds were budgeted, and the projected schedule for expenditure;

(b) is in a format developed by the state auditor;

(c) is certified by the local political subdivision's chief financial officer; and

(d) is transmitted annually to the state auditor.

11-36a-602. Expenditure of impact fees.

(1) A local political subdivision may expend impact fees only for a system improvement:

(a) identified in the impact fee facilities plan; and

(b) for the specific public facility type for which the fee was collected.

(2) (a) Except as provided in Subsection (2)(b), a local political subdivision shall expend or encumber

the impact fees for a permissible use within six years of their receipt.

(b) A local political subdivision may hold the fees for longer than six years if it identifies, in writing:

(i) an extraordinary and compelling reason why the fees should be held longer than six years; and

(ii) an absolute date by which the fees will be expended.

11-36a-603. Refunds.

A local political subdivision shall refund any impact fee paid by a developer, plus interest earned, when:

(1) the developer does not proceed with the development activity and has filed a written request for a refund;

(2) the fee has not been spent or encumbered; and

(3) no impact has resulted.

11-36a-701. Impact fee challenge.

(1) A person or an entity residing in or owning property within a service area, or an organization, association, or a corporation representing the interests of persons or entities owning property within a service area, has standing to file a declaratory judgment action challenging the validity of an impact fee.

(2) (a) A person or an entity required to pay an impact fee who believes the impact fee does not meet the requirements of law may file a written request for information with the local political subdivision who established the impact fee.

(b) Within two weeks after the receipt of the request for information under Subsection (2)(a), the local political subdivision shall provide the person or entity with the impact fee analysis, the impact fee facilities plan, and any other relevant information relating to the impact fee.

(3) (a) Subject to the time limitations described in Section 11-36a-702 and procedures set forth in Section 11-36a-703, a person or an entity that has paid an impact fee that was imposed by a local political subdivision may challenge:

(i) if the impact fee enactment was adopted on or after July 1, 2000:

(A) subject to Subsection (3)(b)(i) and except as provided in Subsection (3)(b)(ii), whether the local political subdivision complied with the notice requirements of this chapter with respect to the imposition of the impact fee; and

(B) whether the local political subdivision complied with other procedural requirements of this chapter for imposing the impact fee; and

(ii) except as limited by Subsection (3)(c), the impact fee.

(b) (i) The sole remedy for a challenge under Subsection (3)(a)(i)(A) is the equitable remedy of requiring the local political subdivision to correct the defective notice and repeat the process.

(ii) The protections given to a municipality under Section 10-9a-801 and to a county under Section 17-27a-801 do not apply in a challenge under Subsection (3)(a)(i)(A).

(c) The sole remedy for a challenge under Subsection (3)(a)(ii) is a refund of the difference between what the person or entity paid as an impact fee and the amount the impact fee should have been if it had been correctly calculated.

(4) (a) Subject to Subsection (4)(d), if an impact fee that is the subject of an advisory opinion under Section 13-43-205 is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion:

(i) the substantially prevailing party on that cause of action:

(A) may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution; and

(B) shall be refunded an impact fee held to be in violation of this chapter, based on the difference between the impact fee paid and what the impact fee should have been if the government entity had correctly calculated the impact fee; and

(ii) in accordance with Section 13-43-206, a government entity shall refund an impact fee held to be in violation of this chapter to the person who was in record title of the property on the day on which the impact fee for the property was paid if:

(A) the impact fee was paid on or after the day on which the advisory opinion on the impact fee was issued but before the day on which the final court ruling on the impact fee is issued; and

(B) the person described in Subsection (3)(a)(ii) requests the impact fee refund from the government entity within 30 days after the day on which the court issued the final ruling on the impact fee.

(b) A government entity subject to Subsection (3)(a)(ii) shall refund the impact fee based on the difference between the impact fee paid and what the impact fee should have been if the government entity had correctly calculated the impact fee.

(c) Subsection (4) may not be construed to create a new cause of action under land use law.

(d) Subsection (3)(a) does not apply unless the resolution described in Subsection (3)(a) is final.

11-36a-702. Time limitations.

(1) A person or an entity that initiates a challenge under Subsection 11-36a-701(3)(a) may not initiate that challenge unless it is initiated within:

(a) for a challenge under Subsection 11-36a-701(3)(a)(i)(A), 30 days after the day on which the person or entity pays the impact fee;

(b) for a challenge under Subsection 11-36a-701(3)(a)(i)(B), 180 days after the day on which the person or entity pays the impact fee; or

(c) for a challenge under Subsection 11-36a-701(3)(a)(ii), one year after the day on which the person or entity pays the impact fee.

(2) The deadline to file an action in district court is tolled from the date that a challenge is filed using an administrative appeals procedure described in Section 11-36a-703 until 30 days after the day on which a final decision is rendered in the administrative appeals procedure.

11-36a-703. Procedures for challenging an impact fee.

(1) (a) A local political subdivision may establish, by ordinance or resolution, an administrative appeals procedure to consider and decide a challenge to an impact fee.

(b) If the local political subdivision establishes an administrative appeals procedure, the local political subdivision shall ensure that the procedure includes a requirement that the local political subdivision make its decision no later than 30 days after the day on which the challenge to the impact fee is filed.

(2) A challenge under Subsection 11-36a-701(3)(a) is initiated by filing:

(a) if the local political subdivision has established an administrative appeals procedure under Subsection (1), the necessary document, under the administrative appeals procedure, for initiating the administrative appeal;

(b) a request for arbitration as provided in Section 11-36a-705; or

(c) an action in district court.

(3) The sole remedy for a successful challenge under Subsection 11-36a-701(1), which determines that an impact fee process was invalid, or an impact fee is in excess of the fee allowed under this act, is a declaration that, until the local political subdivision or private entity enacts a new impact fee study, from the date of the decision forward, the entity may charge an impact fee only as the court has determined would have been appropriate if it had been properly enacted.

(4) Subsections (2), (3), 11-36a-701(3), and 11-36a-702(1) may not be construed as requiring a person or an entity to exhaust administrative remedies with the local political subdivision before filing an action in district court under Subsections (2), (3), 11-36a-701(3), and 11-36a-702(1).

(5) The judge may award reasonable attorney fees and costs to the prevailing party in an action brought under this section.

(6) This chapter may not be construed as restricting or limiting any rights to challenge impact fees that were paid before the effective date of this chapter.

11-36a-704. Mediation.

(1) In addition to the methods of challenging an impact fee under Section 11-36a-701, a specified public agency may require a local political subdivision or private entity to participate in mediation of any applicable impact fee.

(2) To require mediation, the specified public agency shall submit a written request for mediation to the local political subdivision or private entity.

(3) The specified public agency may submit a request for mediation under this section at any time, but no later than 30 days after the day on which an impact fee is paid.

(4) Upon the submission of a request for mediation under this section, the local political subdivision or private entity shall:

(a) cooperate with the specified public agency to select a mediator; and

(b) participate in the mediation process.

11-36a-705. Arbitration.

(1) A person or entity intending to challenge an impact fee under Section 11-36a-703 shall file a written request for arbitration with the local political subdivision within the time limitation described in Section 11-36a-702 for the applicable type of challenge.

(2) If a person or an entity files a written request for arbitration under Subsection (1), an arbitrator or arbitration panel shall be selected as follows:

(a) the local political subdivision and the person or entity filing the request may agree on a single arbitrator within 10 days after the day on which the request for arbitration is filed; or

(b) if a single arbitrator is not agreed to in accordance with Subsection (2)(a), an arbitration panel shall be created with the following members:

(i) each party shall select an arbitrator within 20 days after the date the request is filed; and

(ii) the arbitrators selected under Subsection (2)(b)(i) shall select a third arbitrator.

(3) The arbitration panel shall hold a hearing on the challenge no later than 30 days after the day on which:

(a) the single arbitrator is agreed on under Subsection (2)(a); or

(b) the two arbitrators are selected under Subsection (2)(b)(i).

(4) The arbitrator or arbitration panel shall issue a decision in writing no later than 10 days after the day on which the hearing described in Subsection (3) is completed.

(5) Except as provided in this section, each arbitration shall be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(6) The parties may agree to:

(a) binding arbitration;

(b) formal, nonbinding arbitration; or
(c) informal, nonbinding arbitration.

(7) If the parties agree in writing to binding arbitration:
(a) the arbitration shall be binding;
(b) the decision of the arbitration panel shall be final;
(c) neither party may appeal the decision of the arbitration panel; and
(d) notwithstanding Subsection (10), the person or entity challenging the impact fee may not also challenge the impact fee under Subsection 11-36a-701(1) or Subsection 11-36a-703(2)(a) or (2)(c).

(8) (a) Except as provided in Subsection (8)(b), if the parties agree to formal, nonbinding arbitration, the arbitration shall be governed by the provisions of Title 63G, Chapter 4, Administrative Procedures Act.
(b) For purposes of applying Title 63G, Chapter 4, Administrative Procedures Act, to a formal, nonbinding arbitration under this section, notwithstanding Section 63G-4-502, "agency" means a local political subdivision.

(9) (a) An appeal from a decision in an informal, nonbinding arbitration may be filed with the district court in which the local political subdivision is located.
(b) An appeal under Subsection (9)(a) shall be filed within 30 days after the day on which the arbitration panel issues a decision under Subsection (4).
(c) The district court shall consider de novo each appeal filed under this Subsection (9).
(d) Notwithstanding Subsection (10), a person or entity that files an appeal under this Subsection (9) may not also challenge the impact fee under Subsection 11-36a-701(1) or Subsection 11-36a-703(2)(a) or (2)(c).

(10) (a) Except as provided in Subsections (7)(d) and (9)(d), this section may not be construed to prohibit a person or entity from challenging an impact fee as provided in Subsection 11-36a-701(1) or Subsection 11-36a-703(2)(a) or (2)(c).
(b) The filing of a written request for arbitration within the required time in accordance with Subsection (1) tolls all time limitations under Section 11-36a-702 until the day on which the arbitration panel issues a decision.

(11) The person or entity filing a request for arbitration and the local political subdivision shall equally share all costs of an arbitration proceeding under this section.

Vermont Impact Fee Act

[downloaded February 11, 2005]

Vermont Statutes
TITLE 24: Municipal and County Government
PART 2: Municipalities
CHAPTER 131. IMPACT FEES

§ 5200. Purpose.

It is the intent of this chapter to enable municipalities to require the beneficiaries of new development to pay their proportionate share of the cost of municipal and school capital projects which benefit them and to require them to pay for or mitigate the negative effects of construction.

Added 1987, No. 200 (Adj. Sess.), § 37, eff. July 1, 1989.

§ 5201. Definitions.

As used in this chapter:

(1) "Municipality" means a town, a city, or an incorporated village or an unorganized town or gore.

(2) "Capital project" means:

(A) any physical betterment or improvement including furnishings, machinery, apparatus or equipment for such physical betterment or improvement;

(B) any preliminary studies and surveys relating to any physical betterment or improvement;

(C) land or rights in land; or

(D) any combination of these.

(3) "Impact fee" means a fee levied as a condition of issuance of a zoning or subdivision permit which will be used to cover any portion of the costs of an existing or planned capital project that will benefit or is attributable to the users of the development or to compensate the municipality for any expenses it incurs as a result of construction. The fee may be levied for recoupment of costs for previously expended capital outlay for a capital project that will benefit the users of the development.

(4) "Offsite mitigation" means permanent protection of land not necessarily adjacent to the development site and which compensates for the impact of the development.

Added 1987, No. 200 (Adj. Sess.), § 37, eff. July 1, 1989.

§ 5202. Authorization.

(a) A municipality may levy an impact fee in accordance with this chapter.

(b) A municipality may accept offsite mitigation in lieu of an impact fee or as compensation for damage to important land such as prime agricultural land or important wildlife habitat.

Added 1987, No. 200 (Adj. Sess.), § 37, eff. July 1, 1989.

§ 5203. Procedure.

(a) A municipality may levy an impact fee on any new development within its borders provided that it has:

(1) been confirmed under section 4350 of this title and, after July 1, 1992, adopted a capital budget and program pursuant to chapter 117 of this title. The plan or capital budget and program may include:

(A) indication of locations proposed for development with a potential to create the need for new capital projects;

(B) standards for level of service for the capital projects to be fully or partially funded with impact fees;

(C) proposed locations and project lists, cost estimates and funding sources;

(D) timing or sequence of development in the identified locations; and

(2) developed a reasonable formula that will be used to assess a developer's impact fee. The formula shall reflect the level of service for the capital project to be funded and a means of assessing the impact associated with the development such as square footage or number of bedrooms. The level of service shall be either:

(A) an existing level of service;

(B) a state or federal standard; or

(C) a standard adopted as part of a town plan or capital budget.

(b) The amount of an impact fee used to fund a capital project shall be determined according to a formula developed under subsection (a) of this section. The fee shall be equal to or less than the portion of the capital cost of a capital project which will benefit or is attributable to the development and shall not include costs attributable to the operation, administration or maintenance of a capital project. The municipality may require a fee for the entire cost of a capital project that will initially be used only by the beneficiaries of the development so assessed. In this case, if the project will be used by beneficiaries of future development the municipality shall establish a formula consistent with the formula developed under subsection (a) of this section to require that beneficiaries of future development pay an impact fee to the owners of the development on which the impact fee has already been levied.

(c) In determining the amount of a fee that will be used to fund a capital project, the municipality may account for:

(1) the cost of the existing or proposed facility;

(2) the means, including state or federal grants and fees paid by other developers, by which the facility has been or will be financed;

(3) the extent, if any, to which impact fees should be offset to account for other taxes or fees paid by the developer that will cover the cost of the capital project;

(4) extraordinary costs incurred by the municipality in serving the new development;

(5) the time-price differential inherent in fair comparisons of amounts paid at different times.

(d) In determining the amount of the impact fee to compensate the municipality for expenses incurred as a result of construction, the municipality shall project the expenses that will be incurred. If the actual expense incurred is less than the fee collected from the developer, the municipality shall refund the unexpended portion of the fee within one year of the termination of construction of the project.

(e) The municipality shall provide an annual accounting for each impact fee showing the source, amount of each fee collected and project that was funded with the fee. The municipality must spend the fee on the capital project, for which the fee was intended, within six years of when the fee was paid. If it fails to do this, the owner of the property at the expiration of the six-year period may apply for and receive a refund of his or her proportionate share of that fee during the year following the date on which the right to claim the refund began.

(f) The municipality shall establish the formula and procedure for levying an impact fee by an ordinance or bylaw adopted under chapter 59 or 117 of this title. Such ordinance or bylaw shall include a provision for administrative appeal of the impact fee assessed.

Added 1987, No. 200 (Adj. Sess.), § 37, eff. July 1, 1989; amended 1989, No. 106; 1989, No. 280 (Adj. Sess.), § 11c.

§ 5204. Payment of fees.

(a) An impact fee or obligation for offsite mitigation shall be a lien upon all property and improvements within land development for which the fee is assessed in the same manner and to the same effect as taxes are a lien upon real estate under section 5061 of Title 32.

(b) A municipality may require payment of an impact fee or accept offsite mitigation before issuance of a zoning or subdivision permit.

(c) A municipality may accept fees on installment at a reasonable rate of interest.

(d) A municipality may require a letter of credit to guarantee future payment of an impact fee or offsite mitigation.

Added 1987, No. 200 (Adj. Sess.), § 37, eff. July 1, 1989

§ 5205. Exemptions.

A municipality may exempt certain types of development from any part or all of the impact fee assessed, provided that the exemption achieves other policies or objectives clearly stated in the municipal plan. The policies or objectives may include, but are not limited to, the provision of affordable housing and the retention of existing employment or the generation of new employment.

Added 1987, No. 200 (Adj. Sess.), § 37, eff. July 1, 1989.

§ 5206. Construction of chapter.

Nothing in this chapter shall be construed as prohibiting a municipality from adopting ordinances otherwise authorized by law.

Added 1987, No. 200 (Adj. Sess.), § 37, eff. July 1, 1989.

Virginia Impact Fee Act

[downloaded February 11, 2005]

Note: following descriptive information from Virginia Division of Legislative Services, "Conditional Zoning and Impact Fee Authority in Virginia"
http://dls.state.va.us/groups/growth/meetings/081604/Conditional%20Zoning%20and%20Impact%20Fee%20Authority%20in%20Virginia.pdf

"1. Conditional Zoning

Under Virginia law, there are three different types of conditional zoning (also known as proffer zoning) which localities are authorized to use:

a. Conditional zoning as authorized by §§ 15.2-2296 through 15.2-2302 (excluding §15.2-2298).

This form of conditional zoning is available to all localities but is quite restrictive. The proffered condition must arise from the rezoning application and may not include cash proffers nor dedication of real or personal property.

b. Conditional zoning authorized by § 15.2-2298.

This is the most recently authorized form of conditional zoning and is available to any locality which has had a population increase of 10 percent or greater from the next-to-latest to latest decennial census. Cash proffers are permitted under this type of conditional zoning. However, there are restrictions on how this type of conditional zoning can be used that are not applicable to the type authorized by § 15.2-2303. (See c below.)

c. Conditional zoning authorized by § 15.2-2303.

This type of conditional zoning applies generally to Northern Virginia and the Eastern Shore and is the most flexible of the three types with few restrictions on what may be proffered and accepted. Cash proffers are permitted.

2. Impact Fees

Under current law, the use of impact fees is limited to roads only. The General Assembly authorized the use of road impact fees in 1989 (§ 15.2-2317 et seq.) This authorization applies only to Northern Virginia localities, including the recently added Stafford County. Generally, authorized localities have not used these provisions, but have relied on existing conditional zoning authority. Numerous other localities have unsuccessfully sought impact fee authorization for roads, schools and other public uses in recent years."

Code of Virginia
Title 15.2 - COUNTIES, CITIES AND TOWNS.
Chapter 22 - Planning, Subdivision of Land and Zoning

[includes changes by Acts of the 2007 Assembly, Chapter 896, April 11, 2007]

§§ 15.2-2317. Applicability of article.

This article shall apply to any locality that has adopted zoning pursuant to Article 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 and that (i) has a population of at least 20,000 and has a population growth rate of at least 5% or (ii) has population growth of 15% or more. For the purposes of this section, population growth

shall be the difference in population from the next-to-latest to the latest decennial census year, based on population reported by the United States Bureau of the Census.

§§ 15.2-2318. Definitions.

As used in this article, unless the context requires a different meaning:

"Cost" includes, in addition to all labor, materials, machinery and equipment for construction, (i) acquisition of land, rights-of-way, property rights, easements and interests, including the costs of moving or relocating utilities, (ii) demolition or removal of any structure on land so acquired, including acquisition of land to which such structure may be moved, (iii) survey, engineering, and architectural expenses, (iv) legal, administrative, and other related expenses, and (v) interest charges and other financing costs if impact fees are used for the payment of principal and interest on bonds, notes or other obligations issued by the locality to finance the road improvement.

"Impact fee" means a charge or assessment imposed against new development in order to generate revenue to fund or recover the costs of reasonable road improvements benefiting the new development. Impact fees may not be assessed and imposed for road repair, operation and maintenance, nor to meet demand which existed prior to the new development.

"Impact fee service area" means an area designated within the comprehensive plan of a locality having clearly defined boundaries and clearly related traffic needs and within which development is to be subject to the assessment of impact fees.

"Road improvement" includes construction of new roads or improvement or expansion of existing roads and related appurtenances as required by applicable standards of the Virginia Department of Transportation, or the applicable standards of a locality with road maintenance responsibilities, to meet increased demand attributable to new development. Road improvements do not include on-site construction of roads which a developer may be required to provide pursuant to §§§§ 15.2-2241 through 15.2-2245.

§§ 15.2-2319. Authority to assess and impose impact fees.

Any applicable locality may, by ordinance pursuant to the procedures and requirements of this article, assess and impose impact fees on new development to pay all or a part of the cost of reasonable road improvements that benefit the new development.

Prior to the adoption of the ordinance, a locality shall establish an impact fee advisory committee. The committee shall be composed of not less than five nor more than ten members appointed by the governing body of the locality and at least forty percent of the membership shall be representatives from the development, building or real estate industries. The planning commission or other existing committee that meets the membership requirements may serve as the impact fee advisory committee. The committee shall serve in an advisory capacity to assist and advise the governing body of the locality with regard to the ordinance. No action of the committee shall be considered a necessary prerequisite for any action taken by the locality in regard to the adoption of an ordinance.

§§ 15.2-2320. Impact fee service areas to be established.

The locality shall delineate one or more impact fee service areas within its comprehensive plan. Impact fees collected from new development within an impact fee service area shall be expended for road improvements within that impact fee service area. An impact fee service area may encompass more than one road improvement project. A locality may exclude urban development areas designated pursuant to § 15.2.2223.1 from impact fee service areas.

§§ 15.2-2321. Adoption of road improvements program.

Prior to adopting a system of impact fees, the locality shall conduct an assessment of road improvement needs benefiting an impact fee service area and shall adopt a road improvements plan for the area showing the new roads proposed to be constructed and the existing roads to be improved or expanded and the schedule for undertaking such construction, improvement or expansion. The road improvements plan shall be adopted as an amendment to the required comprehensive plan and shall be incorporated into the capital improvements program or, in the case of the counties where applicable, the six-year plan for secondary road construction pursuant to §§ 33.1-70.01.

The locality shall adopt the road improvements plan after holding a duly advertised public hearing. The public hearing notice shall identify the impact fee service area or areas to be designated, and shall include a summary of the needs assessment and the assumptions upon which the assessment is based, the proposed amount of the impact fee, and information as to how a copy of the complete study may be examined. A copy of the complete study shall be available for public inspection and copying at reasonable times prior to the public hearing.

The locality at a minimum shall include the following items in assessing road improvement needs and preparing a road improvements plan:

1. An analysis of the existing capacity, current usage and existing commitments to future usage of existing roads, as indicated by (i) current and projected service levels, (ii) current valid building permits outstanding, and (iii) approved and pending site plans and subdivision plats. If the current usage and commitments exceed the existing capacity of the roads, the locality also shall determine the costs of improving the roads to meet the demand. The analysis shall include any off-site road improvements or cash payments for road improvements accepted by the locality and shall include a plan to fund the current usages and commitments that exceed the existing capacity of the roads.

2. The projected need for and costs of construction of new roads or improvement or expansion of existing roads attributable in whole or in part to projected new development. Road improvement needs shall be projected for the impact fee service area when fully developed in accord with the comprehensive plan and, if full development is projected to occur more than 20 years in the future, at the end of a 20-year period. The assumptions with regard to land uses, densities, intensities, and population upon which road improvement projections are based shall be presented.

3. The total number of new service units projected for the impact fee service area when fully developed and, if full development is projected to occur more than 20 years in the future, at the end of a 20-year period. A "service unit" is a standardized measure of traffic use or generation. The locality shall develop a table or method for attributing service units to various types of development and land use, including but not limited to residential, commercial and industrial uses. The table shall be based upon the ITE manual (published by the Institute of Transportation Engineers) or locally conducted trip generation studies, and consistent with the traffic analysis standards adopted pursuant to § 15.2.2222.1.

§§ 15.2-2322. Adoption of impact fee and schedule.

After adoption of a road improvement program, the locality may adopt an ordinance establishing a system of impact fees to fund or recapture all or any part of the cost of providing reasonable road improvements required by benefiting new development. The ordinance shall set forth the schedule of impact fees.

(1989, c. 485, §§ 15.1-498.5; 1997, c. 587.)

§§ 15.2-2323. When impact fees assessed and imposed.

The amount of impact fees to be imposed on a specific development or subdivision shall be determined before or at the time the site plan or subdivision is approved. The ordinance shall specify that the fee is to be collected at the time of the issuance of a building permit. The ordinance shall provide that fees (i) may be paid in lump sum or (ii) be paid on installment at a reasonable rate of interest for a fixed number of years. The locality by ordinance may provide for negotiated agreements with the owner of the property as to the time and method of paying the impact fees.

The maximum impact fee to be imposed shall be determined (i) by dividing projected road improvement costs in the impact fee service area when fully developed by the number of projected service units when fully developed, or (ii) for a reasonable period of time, but not less than ten years, by dividing the projected costs necessitated by development in the next ten years by the service units projected to be created in the next ten years.

The ordinance shall provide for appeals from administrative determinations, regarding the impact fees to be imposed, to the governing body or such other body as designated in the ordinance. The ordinance may provide for the resolution of disputes over an impact fee by arbitration or otherwise.

§§ 15.2-2324. Credits against impact fee.

The value of any dedication, contribution or construction from the developer for off-site road or other transportation improvements benefiting the impact fee service area shall be treated as a credit against the impact fees imposed on the developer's project. The locality shall treat as a credit any off-site transportation dedication, contribution, or construction, whether it is a condition of a rezoning or otherwise committed to the locality. The locality may by ordinance provide for credits for approved on-site transportation improvements in excess of those required by the development.

The locality also shall calculate and credit against impact fees the extent to which (i) other developments have already contributed to the cost of existing roads which will benefit the development, (ii) new development will contribute to the cost of existing roads, and (iii) new development will contribute to the cost of road improvements in the future other than through impact fees, including any special taxing districts, special assessments, or community development authorities.

§§ 15.2-2325. Updating plan and amending impact fee.

The locality shall update the needs assessment and the assumptions and projections at least once every two years. The road improvement plan shall be updated at least every two years to reflect current assumptions and projections. The impact fee schedule may be amended to reflect any substantial changes in such assumptions and projections. Any impact fees not yet paid shall be assessed at the updated rate.
(1989, c. 485, §§ 15.1-498.8; 1997, c. 587.)

§§ 15.2-2326. Use of proceeds.

A separate road improvement account shall be established for the impact fee service area and all funds collected through impact fees shall be deposited in the interest-bearing account. Interest earned on deposits shall become funds of the account. The expenditure of funds from the account shall be only for road improvements benefiting the impact fee service area as set out in the road improvement plan for the impact fee service area.

§§ 15.2-2327. Refund of impact fees.

The locality shall refund any impact fee or portion thereof for which construction of a project is not completed within a reasonable period of time, not to exceed fifteen years. In the event that impact fees are

not committed to road improvements benefiting the impact fee service area within seven years from the date of collection, the locality may commit any such impact fees to the secondary or urban system construction program of that locality for road improvements that benefit the impact fee service area.

Upon completion of a project, the locality shall recalculate the impact fee based on the actual cost of the improvement. It shall refund the difference if the impact fee paid exceeds actual cost by more than fifteen percent. Refunds shall be made to the record owner of the property at the time the refund is made.

Article 9.
Impact Fees.

§ 15.2-2328. Applicability of article.

The provisions of this article shall apply in their entirety to any locality that has established an urban transportation service district in accordance with § 15.2-2403.1. However, the authority granted by this article may be exercised only in areas outside of urban transportation service districts and on parcels that are currently zoned agricultural and are being subdivided for by-right residential development. The authority granted by this article shall expire on December 31, 2008, for any locality that has not established an urban transportation service district and adopted an impact fee ordinance pursuant to this article by such date.

§ 15.2-2329. Imposition of impact fees.

A. Any locality that includes within its comprehensive plan a calculation of the capital costs of public facilities necessary to serve residential uses may impose and collect impact fees in amounts consistent with the methodologies used in its comprehensive plan to defray the capital costs of public facilities related to the residential development.

B. Impact fees imposed and collected pursuant to this section shall only be used for public facilities that are impacted by residential development.

C. A locality imposing impact fees as provided in this section shall allow credit against the impact fees for cash proffers collected for the purpose of defraying the capital costs of public facilities related to the residential development. A locality imposing impact fees as provided in this section shall also include within its comprehensive plan a methodology for calculating credit for the value of proffered land donations to accommodate public facilities, and for the construction cost of any public facilities or public improvements the construction of which is required by proffer.

D. A locality imposing impact fees under this section may require that such impact fees be paid prior to and as a condition of the issuance of any necessary building permits for residential uses.

E. For the purposes of this section, "public facilities" shall be deemed to include: (i) roads, streets, and bridges, including rights-of-way, traffic signals, landscaping, and any local components of federal or state highways; (ii) stormwater collection, retention, detention, treatment, and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements; (iii) parks, open space, and recreation areas and related facilities; (iv) public safety facilities, including police, fire, emergency medical, and rescue facilities; (v) primary and secondary schools and related facilities; and (vi) libraries and related facilities; however, the definition "public facilities" for counties within the Richmond MSA shall be deemed to include: roads, streets, and bridges, including rights-of-way, traffic signals, landscaping, and any local components of federal or state highways.

Referenced in § 15.2-2320 above:

§ 15.2-2223.1. Comprehensive plan to include urban development areas; new urbanism.

A. Every county, city, or town that has adopted zoning pursuant to Article 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 and that (i) has a population of at least 20,000 and population growth of at least 5% or (ii) has population growth of 15% or more, shall, and any county, city or town may, amend its comprehensive plan to incorporate one or more urban development areas. For purposes of this section, population growth shall be the difference in population from the next-to-latest to the latest decennial census year, based on population reported by the United States Bureau of the Census. For purposes of this section, an urban development area is an area designated by a locality that is appropriate for higher density development due to proximity to transportation facilities, the availability of a public or community water and sewer system, or proximity to a city, town, or other developed area. The comprehensive plan shall provide for commercial and residential densities within urban development areas that are appropriate for reasonably compact development at a density of at least four residential units per gross acre and a minimum floor area ratio of 0.4 per gross acre for commercial development. The comprehensive plan shall designate one or more urban development areas sufficient to meet projected residential and commercial growth in the locality for an ensuing period of at least 10 but not more than 20 years, which may include phasing of development within the urban development areas. Future growth shall be based on official estimates and projections of the Weldon Cooper Center for Public Service of the University of Virginia or other official government sources. The boundaries and size of each urban development area shall be reexamined and, if necessary, revised every five years in conjunction with the update of the comprehensive plan and in accordance with the most recent available population growth estimates and projections. Such districts may be areas designated for redevelopment or infill development.

B. The comprehensive plan shall further incorporate principles of new urbanism and traditional neighborhood development, which may include but need not be limited to (i) pedestrian-friendly road design, (ii) interconnection of new local streets with existing local streets and roads, (iii) connectivity of road and pedestrian networks, (iv) preservation of natural areas, (v) satisfaction of requirements for stormwater management, (vi) mixed-use neighborhoods, including mixed housing types, (vii) reduction of front and side yard building setbacks, and (viii) reduction of subdivision street widths and turning radii at subdivision street intersections.

C. The comprehensive plan shall describe any financial and other incentives for development in the urban development areas.

D. No county, city, or town that has amended its comprehensive plan in accordance with this section shall limit or prohibit development pursuant to existing zoning or shall refuse to consider any application for rezoning based solely on the fact that the property is located outside the urban development area.

E. Any county, city, or town that would be required to amend its plan pursuant to this section that determines that its plan accommodates growth in a manner consistent with this section, upon adoption of a resolution certifying such compliance, shall not be required to further amend its plan.

F. Any county that amends its comprehensive plan pursuant to this section may designate one or more urban development areas in any incorporated town within such county, if the governing body of the town has also amended its comprehensive plan to designate the same areas as urban development areas with at least the same density designated by the county.

G. To the extent possible, state and local transportation, housing, and economic development funding shall be directed to the urban development area.

Referenced in § 15.2-2328 above:

§ 15.2-2403.1. Creation of urban transportation service districts.

A. The boundaries of any urban transportation service district created pursuant to this article shall be agreed upon by both the local governing body of an urban county and by the Commonwealth Transportation Board. The overall density of an urban transportation service district shall be one residential unit per gross acre or greater. In the event of a disagreement between the Board and the governing body of an urban county in regard to the boundaries of an urban transportation service district, the parties may request that the Commission on Local Government serve as a mediator. For purposes of this section, an "urban county" means any county with a population of greater than 90,000, according to the United States Census of 2000, that did not maintain its roads as of January 1, 2007.

B. Any urban county that has established an urban transportation service district in accordance with this section shall maintain the roads within such district. Any such county shall receive an amount equal to the per lane mile maintenance payments made to cities and certain towns pursuant to § 33.1-41.1 for the area within the district for purposes of road maintenance.

Washington Impact Fee Act

[downloaded September 28, 2016]

Revised Code of Washington (RCW), current as of August 9, 2016

Title 82: Excise Taxes
82.02: General Provisions

RCW 82.02.050 Impact fees -- Intent -- Limitations.

(1) It is the intent of the legislature:

(a) To ensure that adequate facilities are available to serve new growth and development;

(b) To promote orderly growth and development by establishing standards by which counties, cities, and towns may require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve new growth and development; and

(c) To ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicative fees for the same impact.

(2) Counties, cities, and towns that are required or choose to plan under RCW 36.70A.040 are authorized to impose impact fees on development activity as part of the financing for public facilities, provided that the financing for system improvements to serve new development must provide for a balance between impact fees and other sources of public funds and cannot rely solely on impact fees.

(3) The impact fees:

(a) Shall only be imposed for system improvements that are reasonably related to the new development;

(b) Shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and

(c) Shall be used for system improvements that will reasonably benefit the new development.

(4) Impact fees may be collected and spent only for the public facilities defined in RCW 82.02.090 which are addressed by a capital facilities plan element of a comprehensive land use plan adopted pursuant to the provisions of RCW 36.70A.070 or the provisions for comprehensive plan adoption contained in chapter 36.70, 35.63, or 35A.63 RCW. After the date a county, city, or town is required to adopt its development regulations under chapter 36.70A RCW, continued authorization to collect and expend impact fees shall be contingent on the county, city, or town adopting or revising a comprehensive plan in compliance with RCW 36.70A.070, and on the capital facilities plan identifying:

(a) Deficiencies in public facilities serving existing development and the means by which existing deficiencies will be eliminated within a reasonable period of time;

(b) Additional demands placed on existing public facilities by new development; and

(c) Additional public facility improvements required to serve new development.

If the capital facilities plan of the county, city, or town is complete other than for the inclusion of those elements which are the responsibility of a special district, the county, city, or town may impose impact fees to address those public facility needs for which the county, city, or town is responsible.

RCW 82.02.060 Impact fees -- Local ordinances -- Required provisions.

The local ordinance by which impact fees are imposed:

(1) Shall include a schedule of impact fees which shall be adopted for each type of development activity that is subject to impact fees, specifying the amount of the impact fee to be imposed for each type of system improvement. The schedule shall be based upon a formula or other method of calculating such impact fees. In determining proportionate share, the formula or other method of calculating impact fees shall incorporate, among other things, the following:

(a) The cost of public facilities necessitated by new development;

(b) An adjustment to the cost of the public facilities for past or future payments made or reasonably anticipated to be made by new development to pay for particular system improvements in the form of user fees, debt service payments, taxes, or other payments earmarked for or pro-ratable to the particular system improvement;

(c) The availability of other means of funding public facility improvements;

(d) The cost of existing public facilities improvements; and

(e) The methods by which public facilities improvements were financed;

(2) May provide an exemption for low-income housing, and other development activities with broad public purposes, from these impact fees, provided that the impact fees for such development activity shall be paid from public funds other than impact fee accounts;

~~(3~~(3) May provide an exemption from impact fees for low-income housing. Local governments that grant exemptions for low-income housing under this subsection (3) may either: Grant a partial exemption of not more than eighty percent of impact fees, in which case there is no explicit requirement to pay the exempted portion of the fee from public funds other than impact fee accounts; or provide a full waiver, in which case the remaining percentage of the exempted fee must be paid from public funds other than impact fee accounts. An exemption for low-income housing granted under subsection (2) of this section or this subsection (3) must be conditioned upon requiring the developer to record a covenant that, except as provided otherwise by this subsection, prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and that if the property is converted to a use other than for low-income housing, the property owner must pay the applicable impact fees in effect at the time of conversion. Covenants required by this subsection must be recorded with the applicable county auditor or recording officer. A local government granting an exemption under subsection (2) of this section or this subsection (3) for low-income housing may not collect revenue lost through granting an exemption by increasing impact fees unrelated to the exemption. A school district who receives school impact fees must approve any exemption under subsection (2) of this section or this subsection (3);

(4) Shall provide a credit for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities that are identified in the capital facilities plan and that are required by the county, city, or town as a condition of approving the development activity;

~~(4~~(5) Shall allow the county, city, or town imposing the impact fees to adjust the standard impact fee at the time the fee is imposed to consider unusual circumstances in specific cases to ensure that impact fees are imposed fairly;

~~(5~~(6) Shall include a provision for calculating the amount of the fee to be imposed on a particular development that permits consideration of studies and data submitted by the developer to adjust the amount of the fee;

~~(6~~(7) Shall establish one or more reasonable service areas within which it shall calculate and impose impact fees for various land use categories per unit of development; and

~~(7~~(8) May provide for the imposition of an impact fee for system improvement costs previously incurred by a county, city, or town to the extent that new growth and development will be served by the previously constructed improvements provided such fee shall not be imposed to make up for any system improvement deficiencies.

For purposes of this section, "low-income housing" means housing with a monthly housing expense, that is no greater than thirty percent of eighty percent of the median family income adjusted for family size, for the county where the project is located, as reported by the United States department of housing and urban development. [changes made in 2012]

RCW 82.02.070 Impact fees -- Retained in special accounts -- Limitations on use -- Administrative appeals.

(1) Impact fee receipts shall be earmarked specifically and retained in special interest-bearing accounts. Separate accounts shall be established for each type of public facility for which impact fees are collected. All interest shall be retained in the account and expended for the purpose or purposes for which the impact fees were imposed. Annually, each county, city, or town imposing impact fees shall provide a report on each impact fee account showing the source and amount of all moneys collected, earned, or received and system improvements that were financed in whole or in part by impact fees.

(2) Impact fees for system improvements shall be expended only in conformance with the capital facilities plan element of the comprehensive plan.

(3)(a) Except as provided otherwise by (b) of this subsection, impact fees shall be expended or encumbered for a permissible use within six years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than six years. Such extraordinary or compelling reasons shall be identified in written findings by the governing body of the county, city, or town.

(b) School impact fees must be expended or encumbered for a permissible use within ten years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than ten years. Such extraordinary or compelling reasons shall be identified in written findings by the governing body of the county, city, or town.

(4) Impact fees may be paid under protest in order to obtain a permit or other approval of development activity.

(5) Each county, city, or town that imposes impact fees shall provide for an administrative appeals process for the appeal of an impact fee; the process may follow the appeal process for the underlying development approval or the county, city, or town may establish a separate appeals process. The impact fee may be

modified upon a determination that it is proper to do so based on principles of fairness. The county, city, or town may provide for the resolution of disputes regarding impact fees by arbitration.

RCW 82.02.080 Impact fees -- Refunds.

(1) The current owner of property on which an impact fee has been paid may receive a refund of such fees if the county, city, or town fails to expend or encumber the impact fees within ten years of when the fees were paid or other such period of time established pursuant to RCW 82.02.070(3) on public facilities intended to benefit the development activity for which the impact fees were paid. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first in, first out basis. The county, city, or town shall notify potential claimants by first-class mail deposited with the United States postal service at the last known address of claimants. The request for a refund must be submitted to the county, city, or town governing body in writing within one year of the date the right to claim the refund arises or the date that notice is given, whichever is later. Any impact fees that are not expended within these time limitations, and for which no application for a refund has been made within this one-year period, shall be retained and expended on the indicated capital facilities. Refunds of impact fees under this subsection shall include interest earned on the impact fees.

(2) When a county, city, or town seeks to terminate any or all impact fee requirements, all unexpended or unencumbered funds, including interest earned, shall be refunded pursuant to this section. Upon the finding that any or all fee requirements are to be terminated, the county, city, or town shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first-class mail to the last known address of claimants. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the local government, but must be expended for the indicated public facilities. This notice requirement shall not apply if there are no unexpended or unencumbered balances within an account or accounts being terminated.
(3) A developer may request and shall receive a refund, including interest earned on the impact fees, when the developer does not proceed with the development activity and no impact has resulted.

RCW 82.02.090 Impact fees -- Definitions.

Unless the context clearly requires otherwise, the following definitions shall apply in RCW 82.02.050 through 82.02.090:

(1) "Development activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land, that creates additional demand and need for public facilities. "Development activity" does not include buildings or structures constructed by a regional transit authority.

(2) "Development approval" means any written authorization from a county, city, or town which authorizes the commencement of development activity.

(3) "Impact fee" means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the new development. "Impact fee" does not include a reasonable permit or application fee.

(4) "Owner" means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property if the contract is recorded.

(5) "Project improvements" mean site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. No improvement or facility included in a capital facilities plan approved by the governing body of the county, city, or town shall be considered a project improvement.

(6) "Proportionate share" means that portion of the cost of public facility improvements that are reasonably related to the service demands and needs of new development.

(7) "Public facilities" means the following capital facilities owned or operated by government entities: (a) Public streets and roads; (b) publicly owned parks, open space, and recreation facilities; (c) school facilities; and (d) fire protection facilities in jurisdictions that are not part of a fire district. [added in 2010]

(8) "Service area" means a geographic area defined by a county, city, town, or intergovernmental agreement in which a defined set of public facilities provide service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles.

(9) "System improvements" mean public facilities that are included in the capital facilities plan and are designed to provide service to service areas within the community at large, in contrast to project improvements.

RCW 82.02.100 Impact fees--Exception, mitigation fees paid under chapter 43.21C RCW.

(1) A person required to pay a fee pursuant to RCW 43.21C.060 for system improvements shall not be required to pay an impact fee under RCW 82.02.050 through 82.02.090 for those same system improvements. (2) A person installing a residential fire sprinkler system in a single-family home shall not be required to pay the fire operations portion of the impact fee. The exempted fire operations impact fee shall not include the proportionate share related to the delivery of emergency medical services. [added in 2011]

RCW 82.02.110 Impact fees — Extending use of school impact fees.

Criteria must be developed by the office of the superintendent of public instruction for extending the use of school impact fees from six to ten years and this extension must require an evaluation for each respective school board of the appropriateness of the extension.

West Virginia Local Powers Act

[downloaded October 27, 2011]

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.
ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.

§7-20-1. Short title.

This article shall be known as the "Local Powers Act."

§7-20-2. Purpose and findings.

(a) It is the purpose of this article to provide for the fair distribution of costs for county development by authorizing the assessment and collection of fees to offset the cost of commercial and residential development within affected counties.

(b) The Legislature hereby makes the following findings:

(1) The residents, taxpayers and users of county facilities and services, in affected counties, have contributed significant funds in the form of taxes and user charges toward the cost of existing county facilities and services, which represent a substantial and incalculable investment;

(2) Affected counties in West Virginia are experiencing an increased demand for development which is causing strain on tax revenues and user charges at existing levels and impairing the ability of taxpayers, residents and users to bear the cost of increased demand for county facilities and services. In some instances, county borrowing has been required to meet the demand;

(3) Equitable considerations require that future residents and users of existing county facilities and services contribute toward the investment already made in those facilities and services;

(4) Sound fiscal policy in the efficient administration of county government requires that the imposition of taxes and user charges be commensurate to the actual yearly cost of county facilities and services;

(5) Accumulations of large financial reserves for future capital expenditures unjustly exact unneeded current funds from taxpayers and users; and

(6) County borrowing unnecessarily increases the cost of government by the amount of debt service and should be avoided unless considered absolutely necessary to meet an existing public need.

§7-20-3. Definitions.

(a) "Capital improvements" means the following public facilities or assets that are owned, supported or established by county government:

(1) Water treatment and distribution facilities;

(2) Wastewater treatment and disposal facilities;

(3) Sanitary sewers;

(4) Storm water, drainage, and flood control facilities;

(5) Public primary and secondary school facilities;

(6) Public road systems and rights-of-way;

(7) Parks and recreational facilities; and

(8) Police, emergency medical, rescue, and fire protection facilities. "Capital improvements" as defined herein is limited to those improvements that are treated as capitalized expenses according to generally accepted governmental accounting principles and that have an expected useful life of no less than three years. "Capital improvement" does not include costs associated with the operation, repair, maintenance, or full replacement of capital improvements. "Capital improvement" does include reasonable costs for planning, design, engineering, land acquisition, and other costs directly associated with the capital improvements described herein.

(b) "County services" means the following: (1) Services provided by administration and administrative personnel, law enforcement and its support personnel; (2) street light service; (3) fire-fighting service; (4) ambulance service; (5) fire hydrant service; (6) roadway maintenance and other services provided by roadway maintenance personnel; (7) public utility systems and services provided by public utility systems personnel, water; and (8) all other direct and indirect county services authorized by this code.

(c) "Direct county services" means those public services authorized and provided by various county agencies or departments.

(d) "Indirect county services" means those public services authorized and provided by commissioned agents, agencies or departments of the county.

(e) "Growth county" means any county within the state with an averaged population growth rate in excess of one percent per year as determined from the most recent decennial census counts and forecasted, within decennial census count years, by official records of government or generally approved standard statistical estimate procedures: Provided, That once "growth county" status is achieved it is permanent in nature and the powers derived hereby are continued.

(f) "User" means any member of the public who uses or may have occasion to use county facilities and services as defined herein.

(g) "Impact fees" means any charge, fee, or assessment levied as a condition of the following: (1) Issuance of a subdivision or site plan approval; (2) issuance of a building permit; and (3) approval of a certificate of occupancy, or other development or construction approval when any portion of the revenues collected is intended to fund any portion of the costs of capital improvements for any public facilities or county services not otherwise permitted by law. An impact fee does not include charges for remodeling, rehabilitation, or other improvements to an existing structure or rebuilding a damaged structure, provided there is no increase in gross floor area or in the number of dwelling units that result therefrom.

(h) "Proportionate share" means the cost of capital improvements that are reasonably attributed to new development less any credits or offsets for construction or dedication of land or capital improvements, past or future payments made or reasonably anticipated to be made by new development in the form of user fees, debt service payments, taxes or other payments toward capital improvement costs.

(i) "Reasonable benefit" means a benefit received from the provision of a capital improvement greater than that received by the general public located within the county wherein an impact fee is being imposed.

(j) "Plan" means a county, comprehensive, general, master or other land use plan as described herein.

(k) "Program" means the capital improvements program described herein.

(l) "Unincorporated area" and "total unincorporated area" means all lands and resident estates of a county that are not included within the corporate, annexed areas or legal service areas of an incorporated or chartered municipality, city, town or village located in the state of West Virginia.

§7-20-4. Counties authorized to collect fees.

County governments affected by the construction of new development projects are hereby authorized to require the payment of fees for any new development projects constructed therein in the event any costs associated with capital improvements or the provision of other services are attributable to such project. Such fees shall not exceed a proportionate share of such costs required to accommodate any such new development. Before requiring payment of any fee authorized hereunder, it must be evident that some reasonable benefit from any such capital improvements will be realized by any such development project.

§7-20-5. Credits or offsets to be adjusted; incidental benefit by one development not construed as denying reasonable benefit to new development.

Credits or offsets for past or future payments toward capital improvement costs shall be adjusted for time-price differentials inherent in fair comparisons of monetary amounts paid or received at different times. The receipt of an incidental benefit by any development shall not be construed as denying a reasonable benefit to any other new development.

§7-20-6. Criteria and requirements necessary to implement collection of fees.

(a) As a prerequisite to authorizing counties to levy impact fees related to population growth and public service needs, counties shall meet the following requirements:

> (1) A demonstration that population growth rate history as determined from the most recent base decennial census counts of a county, utilizing generally approved standard statistical estimate procedures, in excess of one percent annually averaged over a five-year period since the last decennial census count; or a demonstration that a total population growth rate projection of one percent per annum for an ensuing five-year period, based on standard statistical estimate procedures, from the current official population estimate of the county;
>
> (2) Adopting a countywide comprehensive plan;
>
> (3) Reviewing and updating any comprehensive plan at no less than five-year intervals;
>
> (4) Drafting and adopting a comprehensive zoning ordinance;
>
> (5) Drafting and adopting a subdivision control ordinance;
>
> (6) Keeping in place a formal building permit and review system which provides a process to regulate the authorization of applications relating to construction or structural modification. The county shall adopt, pursuant to section three-n, article one of this chapter, the state building code into any such building permit and review system; and
>
> (7) Providing an improvement program which shall include:
>
> > (A) Developing and maintaining a list within the county of particular sites with development potential;

(B) Developing and maintaining standards of service for capital improvements which are fully or partially funded with revenues collected from impact fees; and

(C) Lists of proposed capital improvements from all areas, containing descriptions of any such proposed capital improvements, cost estimates, projected time frames for constructing such improvements and proposed or anticipated funding sources.

(b) Capital improvement programs may include provisions to provide for the expenditure of impact fees for any legitimate county purpose. This may include the expenditure of fees for partial funding of any particular capital improvement where other funding exists from any source other than the county or exists in combination with other funds available to the county: Provided, That for such expenditures to be considered legitimate, no county or other local authority may deny or withhold any reasonable benefit that may be derived therefrom from any development project for which such impact fee or fees have been paid.

(c) Capital improvement programs for public elementary and secondary school facilities may include provisions to spend impact fees based on a computation related to the following: (1) The existing local tax base; and (2) the adjusted value of accumulated infrastructure investment, based on net depreciation, and any remaining debt owed thereon. Any such computation must establish the value of any equity shares in the net worth of an impacted school system facility, regardless of the existence of any need to expand such facility. Impact fee revenues may only be used for capital replacement or expansion.

(d) Additional development areas may be added to any plan or capital improvements program provided for hereunder if a county government so desires. The standards governing the construction or structural modification for any such additional area shall not deviate from those adopted and maintained at the time such addition is made.

(e) The county may modify annually any capital improvements plan in addition to any impact fee rates based thereon, pursuant to the following:

(1) The number and extent of development projects begun in the past year;

(2) The number and extent of public facilities existing or under construction;

(3) The changing needs of the general population;

(4) The availability of any other funding sources; and

(5) Any other relevant and significant factor applicable to a legitimate goal or goals of any such capital improvement plan.

§7-20-7. Establishment of impact fees; levies may be used to fund existing capital improvements.

(a) Impact fees assessed against a development project to fund capital improvements and public services may not exceed the actual proportionate share of any benefit realized by such project relative to the benefit to the resident taxpayers. Notwithstanding any other provision of this code to the contrary, those counties that meet the requirements of section six of this article are hereby authorized to assess, levy, collect and administer any tax or fee as has been or may be specifically authorized by the Legislature by general law to the municipalities of this state: Provided, That any assessment, levy or collection shall be delayed sixty days from its regular effective date: Provided, however, That in the event fifteen percent of the qualified voters of the county by petition duly signed by them in their own handwriting and filed with the county commission within forty-five days after any impact fee or levy is imposed by the county commission, pursuant to this article, the fee or levy protested may not become effective until it is ratified by a majority of the legal votes cast thereon by the qualified voters of such county at any primary, general or special election as the county commission directs. Voting thereon may not take place until after notice of the subcommission of the fee a levy on the

ballot has been given by publication of class II legal advertisement and publication area shall be the county where such fee or levy is imposed: Provided further, That counties may not "double tax" by applying a given tax within any corporate boundary in which that municipality has implemented such tax. Any such taxes or fees collected under this law may be used to fund a proportionate share of the cost of existing capital improvements and public services where it is shown that all or a portion of existing capital improvements and public services were provided in anticipation of the needs of new development.

(b) In determining a proportionate share of capital improvements and public services costs, the following factors shall be considered:

(1) The need for new capital improvements and public services to serve new development based on an existing capital improvements plan that shows (A) any current deficiencies in existing capital improvements and services that serve existing development and the means by which any such deficiencies may be eliminated within a reasonable period of time by means other than impact fees or additional levies; and (B) any additional demands reasonably anticipated as the result of capital improvements and public services created by new development;
(2) The availability of other sources of revenue to fund capital improvements and public services, including user charges, existing taxes, intergovernmental transfers, in addition to any special tax or assessment alternatives that may exist;

(3) The cost of existing capital improvements and public services;

(4) The method by which the existing capital improvements and public services are financed;

(5) The extent to which any new development, required to pay impact fees, has contributed to the cost of existing capital improvements and public services in order to determine if any credit or offset may be due such development as a result thereof;

(6) The extent to which any new development, required to pay impact fees, is reasonably projected to contribute to the cost of the existing capital improvements and public services in the future through user fees, debt service payments, or other necessary payments related to funding the cost of existing capital improvements and public services;

(7) The extent to which any new development is required, as a condition of approval, to construct and dedicate capital improvements and public services which may give rise to the future accrual of any credit or offsetting contribution; and

(8) The time-price differentials inherent in reasonably determining amounts paid and benefits received at various times that may give rise to the accrual of credits or offsets due new development as a result of past payments.

(c) Each county shall assess impact fees pursuant to a standard formula so as to ensure fair and similar treatment to all affected persons or projects. A county commission may provide partial or total funding from general or other nonimpact fee funding sources for capital improvements and public services directly related to new development, when such development benefits some public purpose, such as providing affordable housing and creating or retaining employment in the community.

§7-20-8. Use and administration of impact fees.

(a) Revenues collected from the payment of impact fees shall be restricted to funding new and additional capital improvements or expanded or extended public services which benefit the particular developments from which they were paid. Except as provided herein, to ensure that developments for which impact fees have been paid receive reasonable benefits relative to such payments, the use of such funds shall be restricted

to areas wherein development projects are located. County commissions shall have discretion in determining geographical configurations related to the expenditure of impact fee collections.

(b) Impact fees may only be spent on those projects specified in the capital improvement plan described in this article.

(c) When impact fees are collected, the county commission shall enter into agreements with any affected party providing new development in order to ensure compliance with the provisions of this article.

(d) Impact fee receipts shall be specifically earmarked and retained in a special account. All receipts shall be placed in interest-bearing accounts wherein the interest gained thereon shall accrue. All accumulated interest shall be published at least once each fiscal period. The county commission shall provide an annual accounting for each account containing impact fee receipts showing the particular source and amount of all such receipts collected, earned, or received, and the capital improvements and public services that were funded, in whole or in part, thereby.

(e) Impact fees shall be expended only in compliance with the plan. Impact fee receipts shall be expended within six years of receipt thereof unless extraordinary and compelling reasons exist to retain them beyond this period. Such extraordinary or compelling reasons shall be identified and published by the county commission in a local newspaper of general circulation for at least two consecutive weeks.

§7-20-9. Refund of unexpended impact fees.

(a) The owner or purchaser of property for which impact fees have been paid may apply for a refund of any such paid fees. Such refund shall be made when a county commission fails to expend such funds within six years from the date such fees were originally collected. The county commission shall notify potential claimants by first class mail deposited in the United States mail and directed to the last known address of any such claimant. Only the owner or purchaser may apply for such refund. Application for any refund must be submitted to the county commission within one year of the date the right to claim the refund arises. All refunds due and unclaimed shall be retained in the special account and expended as required herein, except as provided in this section. The right to claim any refund may be limited by the provisions of section five in this article.

(b) When a county commission seeks to terminate any impact fee requirement, all unexpended funds shall be refunded to the owner or purchaser of the property from whom such fund was initially collected. Upon the finding that any or all fee requirements are to be terminated, the county commission shall place notice of such termination and the availability of refunds in a newspaper of general circulation one time a week for two consecutive weeks and shall also notify all known potential claimants by first class mail deposited with the United States postal service at their last known address. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds may be transferred to the general fund and used for any public purpose. A county commission is released from this notice requirement if there are no unexpended balances within an account or funds being terminated.

§7-20-10. Impact fees required to be consistent with other development regulations.

County commissions that require the payment of impact fees in providing capital improvements and public services shall incorporate such financial requirements within a master land use plan in order that any new development or developments are not required to contribute more than their proportionate share of the cost of providing such capital improvements and public services.

§7-20-11. Additional powers.

(a) In addition to any other powers which a county may now have and not withstanding the provisions of section six of this article, each county, by and through its county commission, shall have the following powers:

(1) To acquire, whether by purchase, construction, gift, lease or otherwise, one or more infrastructure projects, or additions thereto, which shall be located within the county;

(2) To lease, lease with an option to purchase, sell, by installment sale or otherwise, or otherwise dispose of, to others any infrastructure projects for such rentals or amounts and upon such terms and conditions as the county commission may deem advisable;

(3) To establish a special infrastructure fund as a separate fund into which all special service fees and other revenues designated by the county commission shall be deposited, and from which all project costs shall be paid, which may be assigned to and held by a trustee for the benefit of bondholders if special infrastructure revenue bonds are issued by the county commission; and

(4) To impose a countywide service fee to pay the costs of one or more infrastructure projects, including, but not limited to, the payment of debt service on any revenue bonds issued under section thirteen of this article.

(b) For purposes of this section and its implementation and use:

(1) "Capital improvements" means the following public facilities or assets that are owned, supported or established by a county commission:

(A) Water treatment and distribution facilities;

(B) Wastewater treatment and disposal facilities;

(C) Sanitary sewers;

(D) Storm water, drainage and flood control facilities; and

(E) Public road systems, including, but not limited to, rights-of-way, lighting, sidewalks and gutters.

"Capital improvements" as defined herein is limited to those improvements that are treated as capitalized expenses according to generally accepted governmental accounting principles and that have an expected useful life of no less than three years. "Capital improvement" does not include costs associated with the operation, repair, maintenance or full replacement of capital improvements. "Capital improvement" does include reasonable costs for planning, design, engineering, land acquisition and other costs directly associated with the capital improvements described herein, whether incurred prior to or subsequent to imposition of a countywide service fee. This includes costs incurred by a developer prior to imposition of the countywide service fee that would have been incurred by the county commission as part of the cost of capital improvement, provided such costs were not incurred more than thirty-six months before the county commission adopts the order imposing the countywide service fee, or such shorter period, as determined to be reasonable in the sole discretion of the county commission.

(2) "Plan" means the plan for special infrastructure projects that includes one or more capital improvements, as defined in this section that is adopted by a county commission in conformity with the requirements of this article.

(c) Before commencing certain infrastructure projects, the county commission shall obtain written confirmations from an affected public utility or the West Virginia Department of Transportation or other agency, as provided in this section:

(1) If the project includes water, wastewater or sewer improvements, the county commission shall obtain from the utility or utilities that provide service in the area or areas where the improvements will be made that the utility or utilities:

(A) Currently has adequate capacity to provide service without significant upgrades or modifications to its treatment, storage or source of supply facilities;

(B) Will review and approve all plans and specifications for the improvements to determine that the improvements conform to the utility's reasonable requirements and, if the improvement consists of water transmission or distribution facilities, that the improvements provide for adequate fire protection for the district; and

(C) If built in conformance with said plans and specifications, will accept the improvements following their completion, unless the project will continue to be owned by the county commission.

(2) If the special infrastructure project includes improvements other than as set forth in subdivision (1), subsection (b) of this section that will be transferred to the West Virginia Department of Transportation or other governmental agency, written evidence that the department or agency will accept the transfer if the infrastructure project is built in conformance with requirements of the Department of Transportation, or other agency, pursuant to plans and specifications approved by the department or other agency.

§7-20-12. Countywide service fees.

(a) Notwithstanding any provision of this code to the contrary, every county shall have plenary power and authority to impose a countywide service fee upon each employee and self-employed individual for each week or part of a calendar week the individual works within the county, subject to the following:

(1) No individual shall pay the fee more than once for the same week of employment within the county.

(2) The fee imposed pursuant to this section is in addition to all other fees imposed by the jurisdiction within which the individual is employed.

(3) The fee imposed pursuant to this section may not take effect until the first day of a calendar month, as set forth in the order of the county commission establishing the fee, that begins at least thirty days after a majority of the registered voters of the county voting on the question approve imposition of the service fee, in a primary, general or a special election held in the county.

(4) The order of the county commission shall provide for the administration, collection and enforcement of the service fee. Employers who have employees that work in the county imposing the service fee shall withhold the fee from compensation paid to the employee and pay it over to the county as provided in the order of the county commission. Self-employed individuals shall pay the service fee to the county commission in accordance with the order establishing the fee.

(5) The terms "employed", "employee", "employer" and "self-employed" have the following meaning:

(A) "Employed" shall include an employee working for an employer so as to be subject to any federal or state employment or wage withholding requirement and a self-employed individual working as a sole proprietor or member of a firm so as to be subject to self-employment tax. An employee shall be considered employed in a calendar week so long as the employee remains on the current payroll of an employer deriving compensation for such

week and the employee has not been permanently assigned to an office or place of business outside the county. A self-employed individual shall be considered employed in a calendar week so long as such individual has not permanently discontinued employment within the county.

(B) "Employee" means any individual who is employed at or physically reports to one or more locations within the county and is on the payroll of an employer, on a full-time or part-time basis or temporary basis, in exchange for salary, wages or other compensation.

(C) "Employer" means any person, partnership, limited partnership, limited liability company, association (unincorporated or otherwise), corporation, institution, trust, governmental body or unit or agency, or any other entity (whether its principal activity is for-profit or not-for-profit) situated, doing business, or conducting its principal activity in the county and who employs an employee, as defined in this section.

(D) "Self employed individual" means an individual who regularly maintains an office or place of business for conducting any livelihood, job, trade, profession, occupation, business or enterprise of any kind within the county's geographical boundaries over the course of four or more calendar weeks, which need not be consecutive, in any given calendar year.

(6) All revenues generated by the county service fee imposed pursuant to this section shall be dedicated to and shall be exclusively utilized for the purpose or purposes set forth in the referendum approved by the voters, including, but not limited to, the payment of debt service on any bonds issued pursuant to section thirteen of this article and any costs related to the administration, collection and enforcement of the service fee.

(b) Any order entered by a county commission imposing a countywide service fee pursuant to this part, or increasing or decreasing a countywide service fee previously adopted pursuant to this part, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the county. The order shall not become effective until it is ratified by a majority of the lawful votes cast thereon by the qualified voters of the county at a primary, general or special election, as the county commission shall direct. Voting thereon shall not take place until after notice of the referendum shall have been given by publication as above provided for the publication of the order after it is adopted by the county commission. The notice of referendum shall at a minimum include: (1) The date of the referendum; (2) the amount of countywide service fee; (3) a general description of the capital improvement or improvements included in the special infrastructure project to be financed with the service fee; (4) whether revenue bonds will be issued; and (5) if bonds are to be issued, the estimated term of the revenue bonds. The county commission may include additional information in the notice of referendum.

§7-20-13. Bonds issued to finance infrastructure project.

(a) The county commission, in its discretion, may use the moneys in such special infrastructure fund to finance the costs of the special infrastructure projects on a cash basis. The county commission periodically may issue special infrastructure revenue bonds of the county as provided in this section to finance all or part of such special infrastructure projects and pledge all or any part of the moneys in such special infrastructure fund for the payment of the principal of and interest on such special infrastructure revenue bonds and for reserves therefor. Any pledge of the special infrastructure fund for special infrastructure revenue bonds shall be a prior and superior charge on the special infrastructure fund over the use of any of the moneys in the fund to pay for the cost of any of such purposes on a cash basis.

(b) Such special infrastructure revenue bonds periodically may be authorized and issued by the county commission to finance, in whole or in part, the special infrastructure projects in an aggregate principal amount not exceeding the amount which the county commission determines can be paid as to both principal

and interest and reasonable margins for a reserve therefor from the moneys in such special infrastructure fund.

(c) The issuance of special infrastructure revenue bonds shall be authorized by an order of the county commission and such special infrastructure revenue bonds shall bear such date or dates; mature at such time or times not exceeding forty years from their respective dates; be in such denomination; be in registered form, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices; and shall have such other terms and provisions as determined by the county commission. Such special infrastructure revenue bonds shall be signed by the president of the county commission under the seal of the county commission, attested by the clerk of the county commission. Special infrastructure revenue bonds shall be sold in such manner as the county commission determines is for the best interests of the county.

(d) The county commission may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the resolutions authorizing the issuance of such bonds may enter into valid and legally binding covenants with the holders of such special infrastructure revenue bonds as to the custody, safeguarding and disposition of the proceeds of such special infrastructure revenue bonds, the moneys in such special infrastructure fund, sinking funds, reserve funds or any other moneys or funds; as to the rank and priority, if any, of different issues of special infrastructure revenue bonds by the county commission under the provisions of this section; as to the maintenance or revision of the amounts of such fees; as to the extent to which swap agreements, as defined in section two-h, article two-g, chapter thirteen of this code, shall be used in connection with such special infrastructure revenue bonds, including such provisions as payment, term, security, default and remedy provisions as the county commission shall consider necessary or desirable, if any, under which such fees may be reduced; and as to any other matters or provisions which are considered necessary and advisable by the county commission in the best interests of the county and to enhance the marketability of such special infrastructure revenue bonds.

(e) After the issuance of any of the special infrastructure revenue bonds, the service fee pledged to the payment thereof may not be reduced as long as any of the special infrastructure revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the order, trust agreement or other proceedings under which the special infrastructure revenue bonds were issued.

(f) The special infrastructure revenue bonds shall be and constitute negotiable instruments under the Uniform Commercial Code of this state; shall, together with the interest thereon, be exempt from all taxation by the State of West Virginia, or by any county, school district, municipality or political subdivision thereof; and the special infrastructure revenue bonds may not be considered to be obligations or debts of the state or of the county issuing the bonds and the credit or taxing power of the state or of the county issuing the bonds may not be pledged therefor, but the special infrastructure revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

(g) A holder of the special infrastructure revenue bonds shall have a lien against the special infrastructure fund for payment of the special infrastructure revenue bond and the interest thereon and may bring suit to enforce the lien.

(h) A county commission may issue and secure additional bonds payable out of the special infrastructure fund which bonds may rank on a parity with, or be subordinate or superior to, other bonds issued by the county commission and payable from the special infrastructure fund.

(i) For purposes of this article:

> (1) "Special infrastructure revenue bonds" means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership or other evidences of indebtedness or ownership that are issued by a county commission, the proceeds of which are used

directly or indirectly to finance or refinance special infrastructure projects within the county and financing costs and that are secured by or payable from the special service fees;

(2) "Special infrastructure project" means "capital improvements" as that term is defined in section eleven of this article; and

(3) "Special infrastructure fund" means that fund established and held by the sheriff of the county or a trustee for bondholders, as the case may be, into which the special fees imposed pursuant to section twelve of this article are deposited.

§7-20-14. Use of proceeds from sale of bonds.

(a) The proceeds from the sale of any bonds issued under authority of this article shall be applied only for the purpose for which the bonds were issued: Provided, That any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold. If for any reason any portion of the proceeds shall not be needed for the purpose for which the bonds were issued, then the unneeded portion of the proceeds shall be applied to the purchase of bonds for cancellation or payment of the principal of or the interest on the bonds, or held in reserve for the payment thereof.

(b) The costs of acquiring any special infrastructure project shall be deemed to include the following:

(1) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, capital improvements and facilities, new buildings, structures and fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures, environmental remediation, the acquisition of equipment and site clearing, grading and preparation;

(2) Financing costs, including, but not limited to, an interest paid to holders of evidences of indebtedness issued to pay for project costs, all costs of issuance and any redemption premiums, credit enhancement or other related costs;

(3) Real property acquisition costs;

(4) Professional service costs, including, but not limited to, those costs incurred for architectural planning, engineering and legal advice and services;

(5) Imputed administrative costs, including, but not limited to, reasonable charges for time spent by county employees in connection with the implementation of a project;

(6) Relocation costs, including, but not limited to, those relocation payments made following condemnation and job training and retraining;

(7) Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies, and the costs of informing the public with respect to the implementation of project plans;

(8) Payments made, in the discretion of the county commission, which are found to be necessary or convenient to the implementation of project plans; and

(9) That portion of costs related to the construction of environmental protection devices, storm or sanitary sewer lines, water lines, amenities or streets or the rebuilding or expansion of streets, or the construction, alteration, rebuilding or expansion of which is necessitated by the project plan, whether or not the construction, alteration, rebuilding or expansion is within the area or on land contiguous thereto.

§7-20-15. No contribution by county.

(a) No county commission shall have the power to pay out of its general funds, or otherwise contribute, any of the costs of acquiring, constructing or financing a special infrastructure project to be acquired, constructed or financed, in whole or in part, out of the proceeds from the sale of revenue bonds issued under the authority of this article: Provided, That this provision shall not be construed to prevent a county from accepting donations of property to be used as a part of an infrastructure project or to be used for defraying any part of the cost of any infrastructure project or from imposing a service fee as provided in section twelve of this article, which is dedicated, in whole or in part, to the infrastructure project or to payment of debt service on revenue bonds issued pursuant to this article.

(b) The bonds issued pursuant to this article shall be payable solely from: (1) The revenue derived from the infrastructure project or the financing thereof; (2) the service fee imposed pursuant to section twelve of this article; or (3) any combination of these sources.

(c) No county commission shall have the authority under this article to levy any taxes for the purpose of paying any part of the cost of acquiring, constructing or financing an infrastructure project. However, all necessary preliminary expenses actually incurred by a county commission in the making of surveys, taking options, preliminary planning and all other expenses necessary to be paid prior to the issuance, sale and delivery of the revenue bonds, may be paid by the county commission out of any surplus contained in any item of budgetary appropriation or any revenues, including, but not limited to, service fees, collected in excess of anticipated revenues, which shall be reimbursed and repaid out of the proceeds of the sale of the revenue bonds.

§7-20-16. Bonds made legal investments.

Bonds issued under the provisions of this article shall be legal investments for banks, building and loan associations, and insurance companies organized under the laws of this state and for a business development corporation organized pursuant to chapter thirty-one, article fourteen of this code.

§7-20-17. Construction of article.

Neither this article nor anything herein contained shall be construed as a restriction or limitation upon any powers which a county might otherwise have under any laws of this state, but shall be construed as alternative or additional; and this article shall not be construed as requiring an election on issuance of the bonds by the voters of a county prior to the issuance of bonds hereunder by the county commission and same shall not be construed as requiring any proceeding under any law or laws, other than that which is required by this article.

§7-20-18. No notice, consent or publication required.

No notice to or consent or approval by any other governmental body or public officer shall be required as a prerequisite to the issuance or sale of any bonds or the making of any agreement, a mortgage or deed of trust under the authority of this article. No publication or notice shall be necessary to the validity of any resolution or proceeding had under this article, except where publication or notice is expressly required by this article.

§7-20-19. Public officials exempt from personal liability.

No member of a county commission or other county officer shall be personally liable on any contract or obligation executed pursuant to the authority contained in this article. Nor shall the issuance of bonds under this article be considered as misfeasance in office.

§7-20-20. Cooperation by public bodies.

For the purpose of aiding and cooperating in the planning, undertaking or carrying out of a special infrastructure project located, in whole or in part, within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine:

(1) Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to an authority;

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished in connection with an infrastructure project;

(3) Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places, which it is otherwise empowered to undertake;

(4) Plan or replan, zone or rezone any parcel of land within the jurisdiction of the public body or make exceptions from building regulations and ordinances if such functions are of the character which the public body is otherwise empowered to perform;

(5) Cause administrative and other services to be furnished for the special infrastructure project of the character which the public body is otherwise empowered to undertake or furnish for the same or other purposes;

(6) Incur the entire expense of any public improvements made by the public body in exercising the powers granted in this section;

(7) Do any and all things necessary or convenient to aid and cooperate in the planning or carrying out of a special infrastructure project that is, in whole or in part, located in its jurisdiction;

(8) Lend, grant or contribute funds to a county commission for purposes of a special infrastructure project; and

(9) Employ any funds belonging to or within the control of the public body, including funds derived from the sale or furnishing of property, service, or facilities to a county commission for a special infrastructure project, in the purchase of the bonds or other obligations of a county commission issued under this article and, as the holder of such bonds or other obligations, exercise the rights connected therewith.

§7-20-21. Relocation of public utility lines or facilities to accommodate special infrastructure project.

(a) In the event a county commission determines that any public utility line or facility located upon, across or under any portion of a street, avenue, highway, road or other public place or way shall be temporarily or permanently readjusted, removed, relocated, changed in grade or otherwise altered (each and all hereinafter for convenience referred to as "relocation") in order to accommodate any infrastructure project undertaken pursuant to the provisions of this article, the cost of the relocation shall be borne by the county commission.

(b) For purposes of this section, the term "cost of relocation" shall include the entire amount paid by such utility, exclusive of any right-of-way costs incurred by such utility, properly attributable to such relocation after deducting therefrom any increase in the value of the new line or facility and salvage derived from the old line or facility.

(c) The cost of relocating utility lines or facilities, as defined herein, in connection with any special infrastructure project is hereby declared to be a cost of the project.

§7-20-22. Special infrastructure projects financed by service fee considered to be public improvements subject to prevailing wage, local labor preference and competitive bid requirements.

(a) Any special infrastructure project acquired, constructed or financed, in whole or in part, by service fees imposed by a county commission under section twelve of this article shall be considered to be a "public improvement" within the meaning of the provisions of articles one-c and five-a, chapter twenty-one of this code.

(b) The county commission shall, except as provided in subsection (c) of this section, solicit or require solicitation of competitive bids and require the payment of prevailing wage rates as provided in article five-a, chapter twenty-one of this code and compliance with article one-c of said chapter for any special infrastructure project funded pursuant to section twelve of this article exceeding twenty-five thousand dollars in total cost.

(c) Following the solicitation of the bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the county commission or other person soliciting the bids may reject all bids and solicit new bids on the project.

(d) No officer or employee of this state or of any public agency, public authority, public corporation or other public entity and no person acting or purporting to act on behalf of such officer or employee or public entity shall require that any performance bond, payment bond or bid bond required or permitted by this section be obtained from any particular surety company, agent, broker or producer.

(e) This section does not:

(1) Apply to work performed on construction projects not exceeding a total cost of fifty thousand dollars by regular full-time employees of the county commission: Provided, That no more than fifty thousand dollars shall be expended on an individual project in a single location in a twelve-month period;

(2) Prevent students enrolled in vocational educational schools from being used in construction or repair projects when such use is a part of the students' training program;

(3) Apply to emergency repairs to building components and systems: Provided, That the term "emergency repairs" means repairs that, if not made immediately, will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems; or

(4) Apply to any situation where the county commission comes to an agreement with volunteers, or a volunteer group, by which the county commission will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the county commission: Provided, That the total cost of the construction or repair projects does not exceed fifty thousand dollars.

§7-20-23. Excess funds; termination of service fee.

(a) When revenue bonds have been issued as provided in this article and the amount of service fees imposed pursuant to section twelve of this article and collected by the sheriff, less costs of administration, collection and enforcement, exceeds the amount needed to pay project costs and annual debt service, including the finding of required debt service and maintenance reserves, the additional amount shall be set aside in a separate fund and used to retire some or all of the outstanding revenue bonds before their maturity date.

(b) Once the revenue bonds issued as provided in this article are no longer outstanding or the county commission determines that sufficient reserves have been or will be accumulated as of a specified date to pay

all future debt service on the outstanding bonds, the service fee to payable services on a subsequent issue of revenue bonds imposed pursuant to section twelve of this article may not be imposed or collected for subsequent weeks after that date. Termination of the service fee as provided in this section shall not bar or otherwise prevent the county commission from collecting service fees that accrued before the termination date.

§7-20-24. Severability.

If any section, clause, provision or portion of this article shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause or provision of this article which is not in and of itself unconstitutional.

§7-20-7a. Impact fees for affordable housing.

(a) The Legislature finds that:

(1) There is a lack of affordable housing in counties that impose impact fees because the cost of the fees along with the economic conditions in those counties has resulted in low and moderate income persons, persons on fixed incomes, the elderly and persons with special needs, not being able to obtain safe, decent and affordable housing;

(2) A lack of affordable housing affects the ability of a community to develop and maintain strong and stable economies, and impairs the health, stability and self-esteem of individuals and families; and

(3) Financing affordable housing particularly in high growth counties is becoming increasingly difficult.

For these reasons, it is in the public interest to encourage counties that have imposed impact fees and those considering the imposition of impact fees to fairly assess and discount impact fees so as not to limit safe, decent and affordable housing.

(b) On or before July 1, 2012, a county imposing impact fees shall enact an affordable housing component with a discount impact fees schedule, based upon the new homes value compared to the most recent annual single dwelling residential housing index created in section two-b, article one, chapter eleven of this code, to the county's impact fees ordinance. The impact fees schedule shall be updated annually to reflect the changes to the single dwelling residential housing index.

(c) The affordable housing component shall:

(1) Take into account all the different types of housing, including single family detached, single family attached, duplex, town house, apartment, condominium and manufactured home; and

(2) Include a discount for mobile homes, as defined in section one, article one, chapter seventeen-a of this code, based upon the value set out in the National Automobile Dealers Association book.

(d) The county commission shall annually approve, by a majority vote, any increase or decrease in the impact fees schedule.

Wisconsin Impact Fee Act

[downloaded August 10, 2015]

Updated through 2015 Wisconsin Act 58 and all Supreme Court Orders entered before August 7, 2015.

66.0617 Impact fees.

(1) Definitions. In this section:

(a) "Capital costs" means the capital costs to construct, expand or improve public facilities, including the cost of land, and including legal, engineering and design costs to construct, expand or improve public facilities, except that not more than 10% of capital costs may consist of legal, engineering and design costs unless the municipality can demonstrate that its legal, engineering and design costs which relate directly to the public improvement for which the impact fees were imposed exceed 10% of capital costs. "Capital costs" does not include other noncapital costs to construct, expand or improve public facilities, vehicles; or the costs of equipment to construct, expand or improve public facilities.

(b) "Developer" means a person that constructs or creates a land development.

(c) "Impact fees" means cash contributions, contributions of land or interests in land or any other items of value that are imposed on a developer by a municipality under this section.

(d) "Land development" means the construction or modification of improvements to real property that creates additional residential dwelling units within a municipality or that results in nonresidential uses that create a need for new, expanded or improved public facilities within a municipality.

(e) "Municipality" means a city, village, or town.

(f) "Public facilities" means all of the following:

1. Highways as defined in s. 340.01 (22), and other transportation facilities, traffic control devices, facilities for collecting and treating sewage, facilities for collecting and treating storm and surface waters, facilities for pumping, storing, and distributing water, parks, playgrounds, and land for athletic fields, solid waste and recycling facilities, fire protection facilities, law enforcement facilities, emergency medical facilities and libraries. "Public facilities" does not include facilities owned by a school district.

2. Notwithstanding subd. 1., with regard to impact fees that were first imposed before June 14, 2006, "public facilities" includes other recreational facilities that were substantially completed by June 14, 2006. This subdivision does not apply on or after January 1, 2018.

(g) "Service area" means a geographic area delineated by a municipality within which there are public facilities.

(h) "Service standard" means a certain quantity or quality of public facilities relative to a certain number of persons, parcels of land or other appropriate measure, as specified by the municipality.

(2) General.

(a) A municipality may enact an ordinance under this section that imposes impact fees on developers to pay for the capital costs that are necessary to accommodate land development.

(b) Subject to par. (c), this section does not prohibit or limit the authority of a municipality to finance public facilities by any other means authorized by law, except that the amount of an impact fee imposed by a

municipality shall be reduced, under sub. (6) (d), to compensate for any other costs of public facilities imposed by the municipality on developers to provide or pay for capital costs.

(c) Beginning on May 1, 1995, a municipality may impose and collect impact fees only under this section.

(3) Public hearing; notice. Before enacting an ordinance that imposes impact fees, or amending an existing ordinance that imposes impact fees, a municipality shall hold a public hearing on the proposed ordinance or amendment. Notice of the public hearing shall be published as a class 1 notice under ch. 985, and shall specify where a copy of the proposed ordinance or amendment and the public facilities needs assessment may be obtained.

(4) Public facilities needs assessment.

(a) Before enacting an ordinance that imposes impact fees or amending an ordinance that imposes impact fees by revising the amount of the fee or altering the public facilities for which impact fees may be imposed, a municipality shall prepare a needs assessment for the public facilities for which it is anticipated that impact fees may be imposed. The public facilities needs assessment shall include, but not be limited to, the following:

1. An inventory of existing public facilities, including an identification of any existing deficiencies in the quantity or quality of those public facilities, for which it is anticipated that an impact fee may be imposed.

2. An identification of the new public facilities, or improvements or expansions of existing public facilities, that will be required because of land development for which it is anticipated that impact fees may be imposed. This identification shall be based on explicitly identified service areas and service standards.

3. A detailed estimate of the capital costs of providing the new public facilities or the improvements or expansions in existing public facilities identified in subd. 2., including an estimate of the cumulative effect of all proposed and existing impact fees on the availability of affordable housing within the municipality.

(b) A public facilities needs assessment or revised public facilities needs assessment that is prepared under this subsection shall be available for public inspection and copying in the office of the clerk of the municipality at least 20 days before the hearing under sub. (3).

(5) Differential fees, impact fee zones.

(a) An ordinance enacted under this section may impose different impact fees on different types of land development.

(b) An ordinance enacted under this section may delineate geographically defined zones within the municipality and may impose impact fees on land development in a zone that differ from impact fees imposed on land development in other zones within the municipality. The public facilities needs assessment that is required under sub. (4) shall explicitly identify the differences, such as land development or the need for those public facilities, which justify the differences between zones in the amount of impact fees imposed.

(6) Standards for impact fees. Impact fees imposed by an ordinance enacted under this section:

(a) Shall bear a rational relationship to the need for new, expanded or improved public facilities that are required to serve land development.

(b) May not exceed the proportionate share of the capital costs that are required to serve land development, as compared to existing uses of land within the municipality.

(c) Shall be based upon actual capital costs or reasonable estimates of capital costs for new, expanded or improved public facilities.

(d) Shall be reduced to compensate for other capital costs imposed by the municipality with respect to land development to provide or pay for public facilities, including special assessments, special charges, land dedications or fees in lieu of land dedications under ch. 236 or any other items of value.

(e) Shall be reduced to compensate for moneys received from the federal or state government specifically to provide or pay for the public facilities for which the impact fees are imposed.

(f) May not include amounts necessary to address existing deficiencies in public facilities.

(g) Shall be payable by the developer or the property owner to the municipality in full upon the issuance of a building permit by the municipality.

(7) Low-cost housing. An ordinance enacted under this section may provide for an exemption from, or a reduction in the amount of, impact fees on land development that provides low-cost housing, except that no amount of an impact fee for which an exemption or reduction is provided under this subsection may be shifted to any other development in the land development in which the low-cost housing is located or to any other land development in the municipality.

(8) Requirements for impact fee revenues. Revenues from each impact fee that is imposed shall be placed in a separate segregated interest-bearing account and shall be accounted for separately from the other funds of the municipality. Impact fee revenues and interest earned on impact fee revenues may be expended only for the particular capital costs for which the impact fee was imposed, unless the fee is refunded under sub. (9).

(9) Refund of impact fees.

(a) Subject to pars. (b), (c), and (d), and with regard to an impact fee that is collected after April 10, 2006, an ordinance enacted under this section shall specify that impact fees that are collected by a municipality within 7 years of the effective date of the ordinance, but are not used within 10 years after the effective date of the ordinance to pay the capital costs for which they were imposed, shall be refunded to the current owner of the property with respect to which the impact fees were imposed, along with any interest that has accumulated, as described in sub. (8). The ordinance shall specify, by type of public facility, reasonable time periods within which impact fees must be spent or refunded under this subsection, subject to the 10-year limit in this paragraph and the extended time period specified in par. (b). In determining the length of the time periods under the ordinance, a municipality shall consider what are appropriate planning and financing periods for the particular types of public facilities for which the impact fees are imposed.

(b) The 10-year time limit for using impact fees that is specified under par. (a) may be extended for 3 years if the municipality adopts a resolution stating that, due to extenuating circumstances or hardship in meeting the 10-year limit, it needs an additional 3 years to use the impact fees that were collected. The resolution shall include detailed written findings that specify the extenuating circumstances or hardship that led to the need to adopt a resolution under this paragraph.

(c)

1. An impact fee that was collected before January 1, 2003, must be used for the purpose for which it was imposed not later than December 31, 2012. Any such fee that is not used by that date shall be refunded to the current owner of the property with respect to which the impact fee was imposed, along with any interest that has accumulated, as described in sub. (8).

2. An impact fee that was collected after December 31, 2002, and before April 11, 2006, must be used for the purpose for which it was imposed not later than the first day of the 120th month beginning after the date on which the fee was collected. Any such fee that is not used by that date shall be refunded to the current owner of the property with respect to which the impact fee was imposed, along with any interest that has accumulated, as described in sub. (8).

(d) With regard to an impact fee that is collected after April 10, 2006, and that is collected more than 7 years after the effective date of the ordinance, such impact fees shall be used within a reasonable period of time after they are collected to pay the capital costs for which they were imposed, or they shall be refunded to the current owner of the property with respect to which the impact fees were imposed, along with any interest that has accumulated, as described in sub. (8).

(10) Appeal. A municipality that enacts an impact fee ordinance under this section shall, by ordinance, specify a procedure under which a developer upon whom an impact fee is imposed has the right to contest the amount, collection or use of the impact fee to the governing body of the municipality.

History: 1993 a. 305; 1997 a. 27; 1999 a. 150 s. 524; Stats. 1999 s. 66.0617; 2005 a. 203, 477; 2007 a. 44, 96; 2009 a. 180.

Related Court Decisions

An association of developers had standing to challenge the use of impact fees. As long as individual developers had a personal stake in the controversy, the association could contest the use of impact fees on their behalf. Further, individual developers subject to the impact fees do have the right to bring their own separate challenges. Metropolitan Builders Association of Greater Milwaukee v. Village of Germantown, 2005 WI App 103, 282 Wis. 2d 458, 698 N.W.2d 301, 04-1433.

Sub. (6) allows a municipality to impose impact fees for a general type of facility without committing itself to any particular proposal before charging the fees. The needs assessment must simply contain a good-faith and informed estimate of the sort of costs the municipality expects to incur for the kind of facility it plans to provide. Sub. (9) requires impact fees ordinances to specify only the type of facility for which fees are imposed. A municipality must be allowed flexibility to deal with the contingencies inherent in planning. Metropolitan Builders Association of Greater Milwaukee v. Village of Germantown, 2005 WI App 103, 282 Wis. 2d 458, 698 N.W.2d 301, 04-1433.

Subs. (2) and (6) (b) authorize municipalities to hold developers responsible only for the portion of capital costs whose necessity is attributable to their developments. A municipality cannot expect developers' money to subsidize the existing residents' proportionate share of the costs. If impact fees revenues exceed the developers' proportionate share of the capital costs of a project, the municipality must return those fees to the current owners of the properties for which developers paid the fees. Metropolitan Builders Association of Greater Milwaukee v. Village of Germantown, 2005 WI App 103, 282 Wis. 2d 458, 698 N.W.2d 301, 04-1433.

When the plaintiff home builders association alleged a town enacted an impact fee ordinance that disproportionately imposed the town's costs on development and the ordinance contained a mechanism for appealing these issues, but the association did not use it, the circuit court did not erroneously exercise its discretion when it concluded the association should have used the ordinance's appeal process before bringing its claims to court. St. Croix Valley Home Builders Association, Inc. v. Township of Oak Grove, 2010 WI App 96, 327 Wis. 2d 510, 787 N.W.2d 454, 09-2166.

The primary purpose of a tax is to obtain revenue for the government as opposed to covering the expense of providing certain services or regulation. A "fee" imposed purely for revenue purposes is invalid absent permission from the state to the municipality to exact such a fee. A "fee in lieu of room tax" that did not help the city recoup its investment in a development but rather was a revenue generator for the city that was

collected from the owners of condominiums in a specific development who chose not rent their units to the public was imposed without legislative permission and was therefore an illegal tax. Bentivenga v. City of Delavan, 2014 WI App 118, 358 Wis. 2d 610, 856 N.W.2d 546, 14-0137.

Rough Proportionality and Wisconsin's New Impact Fee. Ishikawa. Wis. Law. March 1995.