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, 27 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.

Figure 1
IMPACT FEE ENABLING ACTS

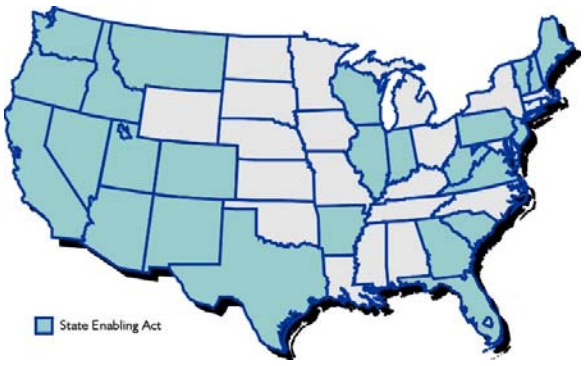

Table 1
STATE IMPACT FEE ENABLING ACTS

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)
Florida	2006	Fla. Stat., § 163.31801
Georgia	1990	Ga. Code Ann., § 36-71-1 et seq.
Hawaii	1992	Haw. Rev. Stat., § 46-141 et seq.; § 264-121 et seq.
Idaho	1992	Idaho Code, § 67-8201 et seq.
Illinois	1987	605 Ill. Comp. Stat. Ann., § 5/5-901 et seq.
Indiana	1991	Ind. Code Ann., § 36-7-4-1300 et seq.
Maine	1988	Me. Rev. State. Ann., Title 30-A, § 4354
Montana	2005	Montana Code Annotated, Title 7, Chapter 6, Part 16
Nevada	1989	Nev. Rev. Stat., § 278B
New Hampshire	1991	N.H. Rev. Stat. Ann., § 674:21
New Jersey	1989	N.J. Perm. Stat., § 27:1C-1 et seq.; § 40:55D-42
New Mexico	1993	New Mexico Stat. Ann., § 5-8-1 et seq.
Oregon	1991	Or. Rev. State, § 223.297 et seq.
Pennsylvania	1990	Pa. 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 S.C., § 6-1-910 et seq.
Texas	1987	Tex. Local Gov't Code Ann., Title 12, § 395.001 et seq.
Utah	1995	Utah Code, § 11-36-101 et. seq.
Vermont	1989	Vt. Stat. Ann., Title 24, § 5200 et seq.
Virginia	1990	Va. Code Ann., § 15.2-2317 et seq.
Washington	1991	Wash. Rev. Code Ann., § 82.02.050 et seq.
West Virginia	1990	W. Va. Code, § 7-20-1 et seq.
Wisconsin	1993	Wis. Stats., § 66.0617

In some states, such as Maryland, Tennessee and North Carolina, impact fees and development taxes are generally authorized for individual jurisdictions through special acts of the legislature. In Tennessee, mayor-aldermanic charter cities have very broad home-rule powers of taxation and specific grants of authority for fees, which have been interpreted as including the authority to levy impact fees. An excellent summary of the authority of cities and counties in Tennessee to levy impact fees and development taxes, through either home rule powers or special local acts, can be found in Tennessee Advisory Commission on Intergovernmental Relations, "Paying for Growth: General Assembly Authorizations for Development Taxes and Impact Fees," April 2002 (http://www.state.tn.us/tacir/PDF_FILES/Growth_Policy/PayingForGrowth.pdf).

One of the 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 2. It is noteworthy that only eight states authorize school impact fees. School impact fees are found almost exclusively in Florida, California, Washington and Maryland (where they are authorized in some counties by special acts of the legislature). School impact fees tend to be high fees that are imposed only on residential development, and their prohibition in most of the country is a testament to the clout of homebuilder associations in state legislatures.

Table 2
FACILITIES ELIGIBLE FOR IMPACT FEES

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

A review of the state enabling acts reveals that, outside of the general principles of rational nexus and rough proportionality laid down by the courts, there is little agreement about what form state regulation should take. Selected characteristics of state impact fee enabling acts are summarized in Table 3. 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 (Arizona, Arkansas, Florida, Maine, Vermont, Wisconsin) to the exhaustive, confusing and conflicting 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.

One of the least settled issues in impact fee practice is whether or how impact fees should be reduced to account for past or future revenues that will be generated by new development and potentially used to the same types of capital improvements for which the impact fees are imposed. State enabling acts provide little consensus or guidance on this matter. A majority of existing state enabling acts require that at least consideration be given to revenue credits, but a minority are completely silent on this issue.

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.

Several states, following Texas' early lead, have imposed a rather onerous recalculation requirement, which 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 was in the original Texas act and was copied almost verbatim in several other acts. Texas has since repealed the provision.

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 platting is the maximum fee that may be charged to development within the subdivision, regardless of when development actually occurs. Two other states have this same provision, while another four lock the fee in for one to four years.

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.

The final column indicates the frequency within which the fees must be updated. Most acts are silent on this issue. Of the less than one-third that require periodic updates, every five years is the most common requirement.

Table 3
SELECTED ENABLING ACT CHARACTERISTICS

State	Length (Word Count)	Time to Collect	Explicit Revenue Credit Reqm't	Spending Time Limit	Recalc, Reqm't	Assess Locks-in Fee	Explicit Waivers	Waiver Funding Req'd?	Update Fre-quency
Arizona	1,068	anytime	yes	none	no	no	none	n/a	none
Arkansas	1,634	cert occ	no	7 years	no	no	none	n/a	none
California	22,907	bldg pmt	no	5 years	no	no	none	n/a	none
Colorado	3,980	anytime	no	none	no	no	afford hsg	no	none
Florida	307	anytime	no	none	no	no	none	n/a	none
Georgia	3,757	bldg pmt	yes	6 years	no	180 days	econ devt	yes	none
Hawaii	2,017	bldg pmt	yes	6 years	no	no	none	n/a	none
Idaho	7,124	bldg pmt	yes	10 years	no	1 year	afford hsg	yes	5 years
Illinois	5,670	bldg/CO	yes	5 years	no	no	none	n/a	5 years
Indiana	9,705	bldg pmt	yes	6 years	no	3 years	afford hsg	no	5 years
Maine	465	anytime	no	none	yes	no	none	n/a	none
Montana	1,809	bldg pmt	yes	none	no	no	none	n/a	none
Nevada	4,685	bldg pmt	no	10 years	yes	no	schools	no	3 years
New Hampshire	2,356	cert occ	no	6 years	no	no	none	n/a	none
New Jersey	8,670	bldg pmt	no	none	no	no	none	n/a	none
New Mexico	6,575	bldg pmt	no	7 years	yes	4 years	afford hsg	unclear	5 years
Oregon	4,111	anytime	no	none	no	no	none	n/a	none
Pennsylvania	6,115	bldg pmt	yes	none	yes	no	afford/other	no	none
Rhode Island	1,942	cert occ	no	8 years	no	no	general	no	none
South Carolina	4,571	bldg pmt	yes	5 years	no	forever	afford hsg	yes	none
Texas	8,641	bldg pmt	yes	10 years	no	forever	afford hsg	no	5 years
Utah	4,818	anytime	yes	6 years	no	no	afford hsg	yes	none
Vermont	1,229	anytime	no	6 years	yes	no	general	no	none
Virginia	1,893	cert occ	yes	15 years	yes	forever	none	n/a	2 years
Washington	2,064	anytime	yes	6 years	no	no	general	yes	none
West Virginia	3,105	anytime	yes	6 years	no	no	general	yes	none
Wisconsin	1,167	bldg pmt	no	7 years	no	no	afford hsg	no	none

Recent Developments

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

Florida can now be said to have an impact fee enabling 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.

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, prohibits impact fees for vehicles, and prohibits fees in lieu of parkland dedication. 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.

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.

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. passed a bill requiring

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. Like the Arkansas act, it is relatively brief and has few restrictive provisions. A key provision, however, may be that the "impact fees imposed may not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity," which would might rule out the imposition of impact fees by a city or county on behalf of a separate agency, such as a school district.

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.

The Idaho legislature amended that state's impact fee enabling act in 2002 in a way that favored 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 property taxes paid in the past or the future by Micron to the district and available for capital improvements. The amendments to the act, which became effective July 1, 2002, seem to 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 acts 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.

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.

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).

In New Mexico, House Bill 334, which was signed by the governor and became law in 2001, specifically authorizes impact fee waivers for affordable housing projects.

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.

Text of Acts

The text of the impact fee enabling acts for the 27 states that have adopted such acts are attached for reference and comparison purposes (Tennessee home rule powers for mayor-aldermanic cities is also included). Most of the acts were downloaded from the Internet within the last year or two; however, the author does not guarantee their accuracy.

- updated by Clancy Mullen, July 22, 2006

List of Attached State Enabling Acts

page

Arizona Impact Fee Acts

[downloaded February 1, 2005]

Title 9: Cities and Towns
Chapter 4: General Powers
Article 6.2: Municipal Subdivision Regulations

9-463.05. Development fees; imposition by cities and towns

A. A municipality may assess development fees to offset costs to the municipality associated with providing necessary public services to a development.

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. 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. Interest earned on monies in the separate fund shall be credited to the fund.

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

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

5. If development fees are assessed by a municipality, such fees shall be assessed in a non-discriminatory 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 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 sixty days' advance notice of intention to assess a new or increased development fee and shall release to the public a written report including all documentation that supports the assessment of a new or increased development fee. The municipality shall conduct a public hearing on the proposed new or increased development fee at any time after the expiration of the sixty day notice of intention to assess a new or increased development fee and at least fourteen days prior to the scheduled date of adoption of the new or increased fee by the governing body. A development fee assessed pursuant to this section shall not be effective until ninety days after its formal adoption by

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

Title 11: Counties
Chapter 8: Development Fees

11-1102. County development fees

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.

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. This section does not affect any development fee adopted before the effective date of this section.

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

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.

(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; 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;

(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 January 8, 2005]

MITIGATION FEE ACT
QUIMBY ACT
SCHOOL IMPACT FEE STATUTES

MITIGATION FEE ACT

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.

(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 is limited 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 XIIIA 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 XIIIA 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, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

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

(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 of the Government Code.

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

(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 2006, if a statewide general obligation bond measure submitted for voter approval in 2006 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.

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

66000. As used in this chapter:

(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 which 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. 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.

66001. (a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local

agency on or after January 1, 1989, 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 on or after January 1, 1989, 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) 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:

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

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

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

(4) Designate the approximate dates on which the funding referred to in paragraph (3) is expected to be deposited into the appropriate account or fund.

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.

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.

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 subdivision (b), 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) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) 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 (2) 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.

(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.

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 facilities in existence at the time a charge is imposed or charges for new facilities to be constructed in the future that are of benefit to the person or property being charged.

(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.

(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, 57004, 65104, 65456, 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

that 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.

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 and 66014.

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 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.
(b) Any costs incurred by a local agency in having an audit conducted by an independent auditor pursuant to subdivision (a) may be recovered from the person who requests the audit.
(c) 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.
(d) The procedures specified in this section shall be alternative and in addition to those specified in Section 54985.
(e) 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.
(f) 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 Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(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) 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.

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.

66037. No action filed on or after January 1, 2006, shall be subject to this chapter unless a later enacted statute, which is chaptered before January 1, 2006, extends this date or deletes this section.

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 Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(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) 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.

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.

66037. No action filed on or after January 1, 2006, shall be subject to this chapter unless a later enacted statute, which is chaptered before January 1, 2006, extends this date or deletes this section.

QUIMBY ACT:

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

downloaded January 8, 2005

....
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

downloaded January 8, 2005

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 meaning as defined in Section 65995 of the Government Code.

(3) For purposes of this section and Section 65995, "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, may 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, may 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 or county 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 or county 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.

17625. 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, where 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) No fee or other requirement levied under Section 17620 shall 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) Where 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 the effective date of this section.

(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 where 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.

Colorado Impact Fee Act

[downloaded February 11, 2005]

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

This information is prepared as an informational service only and should not be relied upon as an official record of action taken by the Colorado General Assembly.

Underlining indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SENATE BILL 01S2-015 BY SENATOR(S) Hernandez, Perlmutter, Anderson, Dyer, Fitz-Gerald,
Matsunaka, Nichol, and Teck; also REPRESENTATIVE(S) Spence and Stafford.

CONCERNING LAND DEVELOPMENT CHARGES THAT MAY BE IMPOSED BY LOCAL GOVERNMENTS.

Be it enacted by the General Assembly of the State of Colorado:

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.

(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) 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.

29-20-104.5. Impact fees.

(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 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 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.

(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.

(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.

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) Except as otherwise provided in this section, 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.

(2) Any county, city and county, or municipality shall be required to comply with the provisions of subsection (1) of this section requiring the deposit or transmittal of land development charges collected but not expended prior to January 1, 1991, only if such land development charges were collected on or after January 1, 1986.

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) Affect any agreements entered into before May 1, 1996, that were the subject of litigation pending before the Colorado supreme court on May 1, 1996. If a supreme court decision affirms the right to impose impact fees or other similar development charges or fees, a local government that had imposed such fees or charges prior to May 1, 1996, may impose and collect such fees and charges until July 1, 1997. If a decision of the supreme court rejects the right to impose such fees or charges, such local government may impose and collect such fees and charges in connection with or as required by a voluntary agreement entered into before July 1, 1996, for the term of the agreement. In either event,

all such impact fees or other similar development charges or fees shall be appropriated on or before December 31, 1997.

(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.

Florida Impact Fee Act

[downloaded June 17, 2006]

[this new section of Florida Statutes was created by Senate Bill 1194, and became effective on June 14, 2006]

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 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.

[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

163.2517 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.

163.3180 Concurrency.

(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 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

[downloaded February 9, 2005]

36-71-1.

(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.

36-71-2.

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.'

(10.1) '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.

(11) '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 or the comfort and convenience of use or service of public facilities or both.

(12) 'Present value' means the current value of past, present, or future payments, contributions or dedications of goods, services, materials, construction, or money.

(13) 'Project' means a particular development on an identified parcel of land.

(14) '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.

(15) 'Proportionate share' means that portion of the cost of system improvements which is reasonably related to the service demands and needs of the project.

(16) '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.

(17) '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.

(18) '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.
(19) '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.'

36-71-3.

(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.

36-71-4.

(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 (16) 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 (16) 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'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.

36-71-5.

(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 40 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.

36-71-6.

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.

36-71-7.

(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.

36-71-8.

(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.
(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 improvement 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) 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.

36-71-9.

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.

36-71-10.

(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.

36-71-11.

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.

36-71-12.

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.

36-71-13.

(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.

Hawaii Impact Fee Act

[downloaded February 11, 2005]

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]

§46-143 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 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]

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.

Idaho Development Impact Fee Act

[downloaded February 11, 2005]

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.

(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" means any building or building component, other than a manufactured home, which is constructed according to standards contained in the Uniform Building Code, as adopted or any amendments thereto, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site.

(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 to 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) At least one (1) public hearing shall be held to consider adoption, amendment, or repeal of a capital improvements plan. Two (2) notices, at least one (1) week apart, of the time, place and purpose of the hearing shall be published not less 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. A second notice of the hearing on adoption of the capital improvements plan, containing the same information, shall be published in the same manner at least seven (7) days before the scheduled date of the hearing. 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) Following adoption of the initial 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.

(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 and shall not take effect earlier than thirty (30) days subsequent to 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 Road Improvement Impact Fee Law

[downloaded February 11, 2005]

Illinois Compiled Statutes
Roads and Bridges
Illinois Highway Code
605 ILCS 5/

ARTICLE 5. COUNTY ADMINISTRATION OF HIGHWAYS
DIVISION 9. ROAD IMPROVEMENT IMPACT FEES

(605 ILCS 5/Art. 5 Div. 9 heading)

DIVISION 9. ROAD IMPROVEMENT IMPACT FEES

(605 ILCS 5/5-901) (from Ch. 121, par. 5-901)

Sec. 5-901. Short title.

This Division may be cited as the Road Improvement Impact Fee Law.

(Source: P.A. 86-97.)

(605 ILCS 5/5-902) (from Ch. 121, par. 5-902)

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.)

(605 ILCS 5/5-903) (from Ch. 121, par. 5-903)

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.
(Source: P.A. 90-356, eff. 8-10-97.)

(605 ILCS 5/5-904) (from Ch. 121, par. 5-904)

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.
(Source: P.A. 88-470.)

(605 ILCS 5/5-905) (from Ch. 121, par. 5-905)

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.

(Source: P.A. 86-97.)

(605 ILCS 5/5-906) (from Ch. 121, par. 5-906)

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.
(Source: P.A. 86-97.)

(605 ILCS 5/5-907) (from Ch. 121, par. 5-907)

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.
(Source: P.A. 91-245, eff. 12-31-99.)

(605 ILCS 5/5-908) (from Ch. 121, par. 5-908)

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.
(Source: P.A. 86-97.)

(605 ILCS 5/5-909) (from Ch. 121, par. 5-909)

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.
(Source: P.A. 86-97.)

(605 ILCS 5/5-910) (from Ch. 121, par. 5-910)

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.
(Source: P.A. 86-97; 86-1158.)

(605 ILCS 5/5-911) (from Ch. 121, par. 5-911)

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.
(Source: P.A. 86-97.)

(605 ILCS 5/5-912) (from Ch. 121, par. 5-912)

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.
(Source: P.A. 86-97.)

(605 ILCS 5/5-913) (from Ch. 121, par. 5-913)

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.
(Source: P.A. 86-97.)

(605 ILCS 5/5-914) (from Ch. 121, par. 5-914)

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.
(Source: P.A. 86-97.)

(605 ILCS 5/5-915) (from Ch. 121, par. 5-915)

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.
(Source: P.A. 88-470.)

(605 ILCS 5/5-916) (from Ch. 121, par. 5-916)

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.
(Source: P.A. 86-97; 87-187.)

(605 ILCS 5/5-917) (from Ch. 121, par. 5-917)

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.
(Source: P.A. 86-97.)

(605 ILCS 5/5-918) (from Ch. 121, par. 5-918)

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.
(Source: P.A. 86-97; 86-1158.)

(605 ILCS 5/5-919) (from Ch. 121, par. 5-919)

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.
(Source: P.A. 86-97.)

Indiana Impact Fees Act

[downloaded February 9, 2005]

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; or

(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.*

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).

Montana Impact Fee Act

[downloaded from http://data.opi.state.mt.us/bills/mca_toc/7_6_16.htm on 3/29/06]

Montana Code Annotated
TITLE 7. LOCAL GOVERNMENT
CHAPTER 6. FINANCIAL ADMINISTRATION AND TAXATION
Part 16. Impact Fees to Fund Capital Improvements

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.

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 documentation that:

(a) describes existing conditions of the facility;

(b) establishes level of service standards;

(c) forecasts future additional needs for service for a defined period of time;

(d) identifies capital improvements necessary to meet future needs for service;

(e) identifies those capital improvements needed for continued operation and maintenance of the facility;

(f) makes 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) makes 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) establishes 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) establishes the methodology that the governmental entity will use to exclude operations and maintenance costs and correction of existing deficiencies from the impact fee;

(j) establishes the amount of the impact fee that will be imposed for each unit of increased service demand; and

(k) has 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 2 years.

(2) The data sources and methodology supporting adoption and calculation of an impact fee must be available to the public upon request.

(3) 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.

(4) The ordinance or resolution adopting the impact fee must include a time schedule for periodically updating the documentation required under subsection (1).

(5) 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.

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(1)(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.

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 and one certified public accountant. 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.

Nevada Impact Fee Act

[updated February 9, 2005]

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.

"Fire station project" means a facility for a fire station or a fire substation. The term does not include:

1. A facility or portion of a facility that is designed for a use related to the administration of a fire department or any other use not directly related to fire fighting; or
2. Any equipment, including, without limitation, vehicles, used for fire fighting.

(Added to NRS by 2001, 843)

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.

"Police station project" means a facility for a police station or a police substation. The term does not include:

1. A facility or portion of a facility that is designed for a use related to the administration of a police department or any other use not directly related to the provision of police services, including, without limitation, the training of police officers; or

2. Any equipment, including, without limitation, vehicles, used to provide police services.
(Added to NRS by 2001, 844)

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 the area within the boundaries of the local government which is served and benefited by the capital improvement or facilities expansion as set forth in the capital improvements plan.
(Added to NRS by 1989, 840)

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;

(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)

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 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,

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,
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,
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, he 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,

Ê 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 February 11, 2005]

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.

[Paragraph V(d) effective until June 1, 2005; see also paragraph V(d) set out below.]

(d) All impact fees imposed pursuant to this section shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with development. In the interim between assessment and collection, 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 assessed impact fees. Impact fees shall normally be collected as a condition for the issuance of a certificate of occupancy. The above notwithstanding, in projects where off-site improvements are to be constructed simultaneously with a project's development, and where a municipality has appropriated the necessary funds to cover such portions of the work for which it will be responsible, that municipality may advance the time of collection of the impact fee to the issuance of a building permit. Nothing in this subparagraph shall prevent the municipality and the assessed party from establishing an alternate, mutually acceptable schedule of payment.

[Paragraph V(d) effective June 1, 2005; see also paragraph V(d) set out above.]

(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 provide to the political subdivision 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. 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 village plan alternative shall permit the developer or owner to have an expedited subdivision application and approval process wherever land use and subdivision regulations may apply. 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. 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. 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) 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.

(e) 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 development.

Source. 1983, 447:1. 1988, 149:1, 2. 1991, 283:1, 2. 1992, 42:1. 1994, 278:1, eff. Aug. 5, 1994. 2002, 236:1, 2, eff. July 16, 2002. 2004, 71:1, 2, eff. July 6, 2004. 2004, 199:2, eff. June 1, 2005; 199:3, eff. June 7, 2004.

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 February 10, 2005]

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.

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.

5-8-43. Purpose; transfer of development rights.

A. The purpose of this section is to:

(1) clarify an application of existing authority;

(2) provide guidelines for counties and municipalities to regulate transfers of development rights consistent with comprehensive plans;

(3) encourage the conservation of ecological, agricultural and historical land; and

(4) require public notification of transfers of development rights.

B. A municipality or county may, by ordinance, provide for voluntary transfer of all or partial development rights from one parcel of land to another parcel of land.

C. The ordinance shall identify on a zoning map areas from which development rights may be transferred and areas to which development rights may be transferred.

D. The ordinance shall provide for:

(1) the voluntary transfer of a development right from one parcel of land to increase the intensity of development of another parcel of land;

(2) joint powers agreements, if applicable, for administration of transfers of development rights across jurisdictional boundaries;

(3) the method of transfer of development rights, including methods of determining the accounting for the rights transferred;

(4) the reasonable rules to effect and control transfers and ensure compliance with the provisions of the ordinance; and

(5) public notification to the areas to which development rights may be transferred.

E. Transference of a development right shall be in writing and executed by the owner of the parcel from which the development right is being transferred and acknowledged by the transferor. A development right shall not be subject to condemnation.

F. As used in this section, "development right" means the rights permitted to a lot, parcel or area of land under a zoning ordinance or local law respecting permissible use, area, density or height of improvements executed thereon, and development rights may be calculated and allocated in accordance with density or height limitations or any criteria that will effectively quantify a development right in a reasonable and uniform manner.

G. Nothing in this section shall be construed to authorize a municipality or a county to impair existing property rights.

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]

Note: See note under 223.297.

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]

Note: See note under 223.297.

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]

Note: See note under 223.297.

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.

223.304.

(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) 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.

(c) 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.

Note: See note under 223.297.

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]

Note: See note under 223.297.

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.

223.309.

(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 may be funded with improvement fee revenues and the estimated cost and timing for each improvement.

(2) A local government that has prepared a plan and the list described in subsection (1) of this section may modify such plan and list at any time.

Note: See note under 223.297.

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]

Note: See note under 223.297.

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]

Note: See note under 223.297.

223.314 Establishment or modification of system development charge 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]

Note: See note under 223.297.

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.

(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.

(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 February 11, 2005]

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. Nothing contained in this chapter shall prevent a municipality from continuing to assess and/or collect an impact fee at an earlier time so long as the municipality does so pursuant to an ordinance enacted at least ninety (90) days prior to the effective date of this chapter [July 22, 2000].

(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 the effective date of this chapter [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.
>
> (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 the effective date of this chapter [July 22, 2000], governmental entities shall conform all impact fee ordinances existing on the effective date of this act [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, February 11, 2005
http://www.scsenate.net/code/t06c001.htm]

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.

(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.

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.

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.

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.

Texas Impact Fee Act

[downloaded February 11, 2005]
[includes changes from SB 247, signed by governor on 5/26/01, effective 9/1/01]

CHAPTER 395. FINANCING CAPITAL IMPROVEMENTS REQUIRED BY NEW DEVELOPMENT IN MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER LOCAL GOVERNMENTS

SUBCHAPTER A. GENERAL PROVISIONS

§§ 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, §§ 82(a), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 566, §§ 1(e), eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 345, §§ 1, eff. Sept. 1, 2001.

SUBCHAPTER B. AUTHORIZATION OF IMPACT FEE

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989. Amended by Acts 1995, 74th Leg., ch. 90, §§ 1, eff. May 16, 1995.

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, §§ 2, eff. Sept. 1, 2001.

§§ 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, §§ 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, §§ 3, eff. Sept. 1, 2001.

§§ 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, §§ 82(a), eff. Aug. 28, 1989. Amended by Acts 1997, 75th Leg., ch. 980, §§ 52, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 345, §§ 4, eff. Sept. 1, 2001.

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 395.022. AUTHORITY OF POLITICAL SUBDIVISION TO PAY FEES.

Political subdivisions and other governmental entities may pay impact fees imposed under this chapter.

Added by Acts 1989, 71st Leg., ch. 1, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 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, §§ 82(a), eff. Aug. 28, 1989. Amended by Acts 1997, 75th Leg., ch. 1396, §§ 37, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, §§ 7.82, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 345, §§ 9, eff. Sept. 1, 2001.

SUBCHAPTER C. PROCEDURES FOR ADOPTION OF IMPACT FEE

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 5, eff. Sept. 1, 2001.

§§ 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, §§ 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, §§ 5, eff. Sept. 1, 2001.

§§ 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, §§ 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, §§ 5, eff. Sept. 1, 2001.

§§ 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, §§ 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, §§ 5, eff. Sept. 1, 2001.

§§ 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, §§ 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, §§ 5, eff. Sept. 1, 2001.

§§ 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, §§ 1(b), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, §§ 5, eff. Sept. 1, 2001.

§§ 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, §§ 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, §§ 5, eff. Sept. 1, 2001.

§§ 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, §§ 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, §§ 5, eff. Sept. 1, 2001.

§§ 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, §§ 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, §§ 5, eff. Sept. 1, 2001.

§§ 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, §§ 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, §§ 6, eff. Sept. 1, 2001.

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, §§ 7, eff. Sept. 1, 2001.

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 1(d), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

SUBCHAPTER D. OTHER PROVISIONS

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 441, §§ 2, eff. Sept. 1, 2001.

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989.

§§ 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, §§ 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 669, §§ 107, eff. Sept. 1, 2001.

§§ 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, §§ 82(a), eff. Aug. 28, 1989. Amended by Acts 1995, 74th Leg., ch. 76, §§ 11.257, eff. Sept. 1, 1995.

§§ 395.081. FEES FOR ADJOINING LANDOWNERS IN CERTAIN MUNICIPALITIES.

(a) This section applies only to a municipality with a population of 105,000 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, §§ 1, eff. June 19, 1997.

§§ 395.082. CERTIFICATION OF COMPLIANCE REQUIRED.

(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, §§ 8, eff. Sept. 1, 2001.

Utah Impact Fees Act

[downloaded June 17, 2006]

[Underline/Strike-out text reflects amendments due to SB 267, effective May 1, 2006]

11-36-101. Title.
This chapter is known as the "Impact Fees Act."

11-36-102. Definitions.
As used in this chapter:
(1) "Building permit fee" means the fees charged to enforce the uniform codes adopted pursuant to Title 58, Chapter 56, Utah Uniform Building Standards Act, that are not greater than the fees indicated in the appendix to the ~~Uniform~~ International Building Code.
(2) "Capital facilities plan" means the plan required by Section 11-36-201.
(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 any written authorization from a local political subdivision that authorizes the commencement of development activity.
(5) "Enactment" means:
(a) a municipal ordinance, for municipalities;
(b) a county ordinance, for counties; and
(c) a governing board resolution, for special districts.
(6) "Hookup fees" means reasonable fees, not in excess of the approximate average costs to the political subdivision, for services provided for and directly attributable to the connection to utility services, including gas, water, sewer, power, or other municipal, county, or independent special district utility services.
(7) (a) "Impact fee" means a payment of money imposed upon development activity as a condition of development approval.
(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.
(8) (a) "Local political subdivision" means a county, a municipality, or a special district created under Title 17A, Special Districts.(b) "Local political subdivision" does not mean school districts, whose impact fee activity is governed by Section 53A-20-100.5.
(9) "Private entity" means an entity with private ownership that provides culinary water that is required to be used as a condition of development.
(10) (a) "Project improvements" means site improvements and facilities that are:
(i) planned and designed to provide service for development resulting from a development activity; and
(ii) necessary for the use and convenience of the occupants or users of development resulting from a development activity.
(b) "Project improvements" does not mean system improvements.
(11) "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.
(12) "Public facilities" means only the following capital facilities that have a life expectancy of ten 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; and
(g) public safety facilities.

(13) (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 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.
(b) "Public safety facility" does not mean a jail, prison, or other place of involuntary incarceration.

(14) (a) "Roadway facilities" means streets or roads that have 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 federal or state roadways 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.

(15) (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 provide service within the area.
(b) "Service area" may include the entire local political subdivision.

(16) (a) "System improvements" means:
(i) existing public facilities that are designed to provide services to service areas within the community at large; and
(ii) future public facilities identified in a capital facilities plan that are intended to provide services to service areas within the community at large.
(b) "System improvements" does not mean project improvements.

11-36-201. Impact fees -- Analysis -- Capital facilities plan -- Notice of plan -- Summary -- Exemptions.

(1) (a) Each local political subdivision and private entity shall comply with the requirements of this chapter before establishing or modifying any impact fee.
(b) A local political subdivision may not:
(i) establish any new impact fees that are not authorized by this chapter; or
(ii) impose or charge any other fees as a condition of development approval unless those fees are a reasonable charge for the service provided.
(c) Notwithstanding any other requirements of this chapter, each local political subdivision shall ensure that each existing impact fee that is charged for any public facility not authorized by Subsection 11-36-102(12) is repealed by July 1, 1995.
(d) (i) Existing impact fees for public facilities authorized in Subsection 11-36-102(12) that are charged by local political subdivisions need not comply with the requirements of this chapter until July 1, 1997.
(ii) By July 1, 1997, each local political subdivision shall:
(A) review any impact fees in existence as of the effective date of this act, and prepare and approve the analysis required by this section for each of those impact fees; and
(B) ensure that the impact fees comply with the requirements of this chapter.

(2) (a) Before imposing impact fees, each local political subdivision shall prepare a capital facilities plan.
(b) (i) As used in this Subsection (2)(b):

(A) (I) "Affected entity" means each county, municipality, independent special district under Title 17A, Chapter 2, Independent Special Districts, local district under Title 17B, Chapter 2, Local Districts, school district, interlocal cooperation entity established under Chapter 13, Interlocal Cooperation Act, and specified public utility:

(Aa) whose services or facilities are likely to require expansion or significant modification because of the facilities proposed in the proposed capital facilities plan; or

(Bb) that has filed with the local political subdivision or private entity a copy of the general or long-range plan of the county, municipality, independent special district, local district, school district, interlocal cooperation entity, or specified public utility.

(II) "Affected entity" does not include the local political subdivision or private entity that is required under this Subsection (2) to provide notice.

(B) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

(ii) Before preparing a capital facilities plan for facilities proposed on land located within a county of the first or second class, each local political subdivision and each private entity shall provide written notice, as provided in this Subsection (2)(b), of its intent to prepare a capital facilities plan.

(iii) Each notice under Subsection (2)(b)(ii) shall:

(A) indicate that the local political subdivision or private entity intends to prepare a capital facilities plan;

(B) describe or provide a map of the geographic area where the proposed capital facilities will be located;

(C) be sent to:

(I) each county in whose unincorporated area and each municipality in whose boundaries is located the land on which the proposed facilities will be located;

(II) each affected entity;

(III) the Automated Geographic Reference Center created in Section 63A-6-202;

(IV) the association of governments, established pursuant to an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, in which the facilities are proposed to be located; and

(V) the state planning coordinator appointed under Section 63-38d-202; and

(D) with respect to the notice to affected entities, invite the affected entities to provide information for the local political subdivision or private entity to consider in the process of preparing, adopting, and implementing a capital facilities plan concerning:

(I) impacts that the facilities proposed in the capital facilities plan may have on the affected entity; and

(II) facilities or uses of land that the affected entity is planning or considering that may conflict with the facilities proposed in the capital facilities plan.

(c) The plan shall identify:

(i) demands placed upon existing public facilities by new development activity; and

(ii) the proposed means by which the local political subdivision will meet those demands.

(d) Municipalities and counties need not prepare a separate capital facilities plan if the general plan required by Sections **10-9-301** and **17-27-301** contains the elements required by Subsection (2)(c).

(e) (i) If a local political subdivision prepares an independent capital facilities plan rather than including a capital facilities element in the general plan, the local political subdivision shall, before adopting the capital facilities plan:

(A) give public notice of the plan according to this Subsection (2)(e);

(B) at least 14 days before the date of the public hearing:

(I) make a copy of the plan, together with a summary designed to be understood by a lay person, available to the public; and

(II) place a copy of the plan and summary in each public library within the local political subdivision; and

(C) hold a public hearing to hear public comment on the plan.

(ii) Municipalities shall comply with the notice and hearing requirements of, and, except as provided in Subsection 11-36-401(4)(f), receive the protections of, Subsections 10-9-103(2) and 10-9-402(2).

(iii) Counties shall comply with the notice and hearing requirements of, and, except as provided in Subsection 11-36-401(4)(f), receive the protections of, Subsections 17-27-103(2) and 17-27-402(2).

(iv) Special districts and private entities shall comply with the notice and hearing requirements of, and receive the protections of, Section 17A-1-203.

(v) Nothing contained in this Subsection (2)(e) or in the subsections referenced in Subsections (2)(e)(ii) and (iii) may be construed to require involvement by a planning commission in the capital facilities planning process.

(f) (i) Local political subdivisions with a population or serving a population of less than 5,000 as of the last federal census need not comply with the capital facilities plan requirements of this part, but shall ensure that the impact fees imposed by them are based upon a reasonable plan.

(ii) Subsection (2)(f)(i) does not apply to private entities.

(3) In preparing the plan, each local political subdivision shall generally consider all revenue sources, including impact fees, to finance the impacts on system improvements.

(4) A local political subdivision may only impose impact fees on development activities when its 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.

(5) (a) Each local political subdivision imposing impact fees shall prepare a written analysis of each impact fee that:

(i) identifies the impact on system improvements required by the development activity;

(ii) demonstrates how those impacts on system improvements are reasonably related to the development activity;

(iii) estimates the proportionate share of the costs of impacts on system improvements that are reasonably related to the new development activity; and

(iv) based upon those factors and the requirements of this chapter, identifies how the impact fee was calculated.

(b) 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 shall identify, if applicable:

(i) the cost of existing public facilities;

(ii) the manner of financing existing public facilities, such as user charges, special assessments, bonded indebtedness, general taxes, or federal grants;

(iii) the relative extent to which the newly developed properties and the other properties in the municipality have already contributed to the cost of existing public facilities, by such means as user charges, special assessments, or payment from the proceeds of general taxes;

(iv) the relative extent to which the newly developed properties and the other properties in the municipality will contribute to the cost of existing public facilities in the future;

(v) the extent to which the newly developed properties are entitled to a credit because the municipality is requiring their developers or owners, by contractual arrangement or otherwise, to provide common facilities, inside or outside the proposed development, that have been provided by the municipality and financed through general taxation or other means, apart from user charges, in other parts of the municipality;

(vi) extraordinary costs, if any, in servicing the newly developed properties; and

(vii) the time-price differential inherent in fair comparisons of amounts paid at different times.

(c) Each local political subdivision that prepares a written analysis under this Subsection

(5) on or after July 1, 2000 shall also prepare a summary of the written analysis, designed to be understood by a lay person.

(6) Each local political subdivision that adopts an impact fee enactment under Section **11-36-202** on or after July 1, 2000 shall, at least 14 days before adopting the enactment, submit to each public library within the local political subdivision:

(a) a copy of the written analysis required by Subsection (5)(a); and

(b) a copy of the summary required by Subsection (5)(c).

(7) Nothing in this chapter may be construed to repeal or otherwise eliminate any impact fee in effect on the effective date of this act that is pledged as a source of revenues to pay bonded indebtedness that was incurred before the effective date of this act.

11-36-202. Impact fees -- Enactment -- Required provisions.

(1) (a) Each local political subdivision wishing to impose impact fees shall pass an impact fee enactment.

(b) The impact fee imposed by that enactment may not exceed the highest fee justified by the impact fee analysis performed pursuant to Section 11-36-201.

(c) In calculating the impact fee, each local political subdivision may include:

(i) the construction contract price;

(ii) the cost of acquiring land, improvements, materials, and fixtures;

(iii) the cost for planning, surveying, and engineering fees for services provided for and directly related to the construction of the system improvements; and

(iv) 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.

(d) In calculating an impact fee, a local political subdivision may not include an expense for overhead unless the expense is calculated pursuant to a methodology that is consistent with:

(i) generally accepted cost accounting practices; and
(ii) the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement.

(e) In calculating an impact fee, each local political subdivision shall base amounts calculated under Subsection (1)(c) on realistic estimates, and the assumptions underlying those estimates shall be disclosed in the impact fee analysis.

(f) In enacting an impact fee enactment:

(i) municipalities shall:

(A) make a copy of the impact fee enactment available to the public at least 14 days before the date of the public hearing; and
(B) comply with the notice and hearing requirements of, and, except as provided in Subsection 11-36-401(4)(f), receive the protections of, Subsections 10-9-103(2) and 10-9-802(2);

(ii) counties shall:

(A) make a copy of the impact fee enactment available to the public at least 14 days before the date of the public hearing; and
(B) comply with the notice and hearing requirements of, and, except as provided in Subsection 11-36-401(4)(f), receive the protections of, Subsections 17-27-103(2) and 17-27-802(2); and

(iii) special districts shall:

(A) make a copy of the impact fee enactment available to the public at least 14 days before the date of the public hearing; and
(B) comply with the notice and hearing requirements of, and receive the protections of, Section 17A-1-203.

(g) Nothing contained in Subsection (1)(f) or in the subsections referenced in Subsections (1)(f)(i)(B) and (ii)(B) may be construed to require involvement by a planning commission in the impact fee enactment process.

(2) The local political subdivision shall ensure that the impact fee enactment contains:

(a) a provision establishing one or more service areas within which it shall calculate and impose impact fees for various land use categories;

(b) either:

(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 will use to calculate each impact fee;

(c) a provision authorizing the local political subdivision to adjust the standard impact fee at the time the fee is charged to:

(i) respond to unusual circumstances in specific cases; 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 fee based upon studies and data submitted by the developer.

(3) The local political subdivision may include a provision in the impact fee enactment that:

(a) exempts low income housing and other development activities with broad public purposes from impact fees and establishes one or more sources of funds other than impact fees to pay for that development activity;

(b) imposes an impact fee for public facility costs previously incurred by a local political subdivision to the extent that new growth and development will be served by the previously constructed improvement; and

(c) allows 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:

(i) are identified in the capital facilities plan; and
(ii) are required by the local political subdivision as a condition of approving the development activity.

(4) Except as provided in Subsection (3)(b), the local political subdivision may not impose an impact fee to cure deficiencies in public facilities serving existing development.

(5) Notwithstanding the requirements and prohibitions of this chapter, a local political subdivision may impose and assess an impact fee for environmental mitigation when:

(a) 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;
(b) the impact fee bears a reasonable relationship to the environmental mitigation required by the Habitat Conservation Plan; and
(c) the legislative body of the local political subdivision adopts an ordinance or resolution:

(i) declaring that an impact fee is required to finance the Habitat Conservation Plan;
(ii) establishing periodic sunset dates for the impact fee; and
(iii) requiring the legislative body to:

(A) review the impact fee on those sunset dates;
(B) determine whether or not the impact fee is still required to finance the Habitat Conservation Plan; and
(C) affirmatively reauthorize the impact fee if the legislative body finds that the impact fee must remain in effect.

(6) Each political subdivision shall ensure that any existing impact fee for environmental mitigation meets the requirements of Subsection (5) by July 1, 1995.

(7) Notwithstanding any other provision of this chapter, ~~municipalities~~

(a) a municipality imposing impact fees to fund fire trucks as of the effective date of this act may impose impact fees for fire trucks until July 1, 1997; and
(b) an impact fee to pay for a public safety facility that is a fire suppression vehicle may not be imposed with respect to land that has a zoning designation other than commercial.

(8) 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.

11-36-301. Impact fees -- Accounting.

Each local political subdivision collecting impact fees shall:

(1) establish separate interest bearing ledger accounts for each type of public facility for which an impact fee is collected;
(2) deposit impact fee receipts in the appropriate ledger account;
(3) retain the interest earned on each fund or account in the fund or account; and
(4) at the end of each fiscal year, prepare a report on each fund or account showing:

(a) the source and amount of all monies collected, earned, and received by the fund or account; and
(b) each expenditure from the fund or account.

11-36-302. Impact fees -- Expenditure.

(1) A local political subdivision may expend impact fees only for:

(a) system improvements for public facilities identified in the capital facilities plan; and
(b) system improvements for the specific public facility type for which the fee was collected.

(2) (a) Except as provided in Subsection (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.

11-36-303. Refunds.
A local political subdivision shall refund any impact fees 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 fees have not been spent or encumbered; and
(3) no impact has resulted.

11-36-401. Impact fees -- Challenges -- Appeals.
(1) Any person or entity residing in or owning property within a service area, and any organization, association, or corporation representing the interests of persons or entities owning property within a service area, may file a declaratory judgment action challenging the validity of the fee.
(2) (a) Any person or entity required to pay an impact fee who believes the fee does not meet the requirements of law may file a written request for information with the local political subdivision who established the fee.
(b) Within two weeks of the receipt of the request for information, the local political subdivision shall provide the person or entity with the written analysis required by Section 11-36-201, the capital facilities plan, and with any other relevant information relating to the impact fee.
(3) (a) Any local political subdivision may establish, by ordinance, an administrative appeals procedure to consider and decide challenges to impact fees.
(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 date the challenge to the impact fee is filed.
(4) (a) In addition to the method of challenging an impact fee under Subsection (1), a person or 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) 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 (4)(a)(i), the impact fee.
(b) A challenge under Subsection (4)(a) may not be initiated unless it is initiated within:
(i) for a challenge under Subsection (4)(a)(i)(A), 30 days after the person or entity pays the impact fee;
(ii) for a challenge under Subsection (4)(a)(i)(B), 180 days after the person or entity pays the impact fee; or
(iii) for a challenge under Subsection (4)(a)(ii), one year after the person or entity pays the impact fee.

(c) A challenge under Subsection (4)(a) is initiated by filing:
(i) if the local political subdivision has established an administrative appeals procedure under Subsection (3), the necessary document, under the administrative appeals procedure, for initiating the administrative appeal;
(ii) a request for arbitration as provided in Subsection 11-36-402(1); or
(iii) an action in district court.

(d) (i) The sole remedy for a challenge under Subsection (4)(a)(i)(A) is the equitable remedy of requiring the local political subdivision to correct the defective notice and repeat the process.
(ii) The sole remedy for a challenge under Subsection (4)(a)(i)(B) is the equitable remedy of requiring the local political subdivision to correct the defective process.
(iii) The sole remedy for a challenge under Subsection (4)(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.

(e) Nothing in this Subsection (4) may be construed as requiring a person or entity to exhaust administrative remedies with the local political subdivision before filing an action in district court under this Subsection (4).

(f) The protections given to a municipality under Subsection 10-9-103(2) and to a county under Subsection 17-27-103(2) do not apply in a challenge under Subsection (4)(a)(i)(A).

(5) The judge may award reasonable attorneys' fees and costs to the prevailing party in any action brought under this section.

(6) Nothing in this chapter may be construed as restricting or limiting any rights to challenge impact fees that were paid before the effective date of this chapter.

11-36-402. Challenging an impact fee by arbitration -- Procedure -- Appeal -- Costs.

(1) Each person or entity intending to challenge an impact fee under Subsection 11-36-401(4)(c)(ii) shall file a written request for arbitration with the local political subdivision within the time limitation provided in Subsection 11-36-401(4)(b) for the applicable type of challenge.

(2) If a person or 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 ten days after the day 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 within 30 days after the date:
(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 within ten days from the date the hearing under Subsection (3) is completed.

(5) Except as provided in this section, each arbitration shall be governed by Title 78, Chapter 31a, 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 11-36-401(1), (4)(c)(i), or (4)(c)(iii).

(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 63, Chapter 46b, Administrative Procedures Act.
(b) For purposes of applying Title 63, Chapter 46b, Administrative Procedures Act, to a formal, nonbinding arbitration under this section, notwithstanding Section 63-46b-20, "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) Each appeal under Subsection (9)(a) shall be filed within 30 days after the date 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 11-36-401(1), (4)(c)(i), or (4)(c)(iii).
(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 11-36-401(1), (4)(c)(i), or (4)(c)(iii).
(b) The filing of a written request for arbitration within the required time in accordance with Subsection (1) tolls all time limitations under Section 11-36-401 until the date 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.

11-36-501. Private entity assessment of impact fees -- Notice and hearing -- Audit.
(1) A private entity may only impose a charge for public facilities as a condition of development approval by imposing an impact fee. A private entity shall comply with the requirements of this chapter before imposing an impact fee.
(2) Except as otherwise specified in this chapter, a private entity is subject to the same requirements of this chapter as a local political subdivision.
(3) Where notice and hearing requirements are specified, a private entity shall comply with the notice and hearing requirements for special districts.
(4) A private entity that assesses an impact fee under this chapter is subject to the audit requirements of Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations, and Other Local Entities.

10-5-129. Annual financial report.

(1) (a) Within 180 days after the close of each fiscal year the town clerk or other delegated person shall present to the council an annual financial report. ~~This section~~
(b) Each annual financial report shall identify impact fee funds by the year in which they were received, the project from which the funds were collected, the capital projects for which the funds are budgeted, and the projected schedule for expenditure.
(2) The requirement under Subsection (1)(a) to present an annual financial report may be satisfied by an audit report or 36annual financial report of an independent auditor.

[identical auditing provisions were placed in 10-6-150. Annual financial reports -- Independent audit reports; 17-36-37 and 17A-1-443]

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

[downloaded February 11, 2005]

§§ 15.2-2317. Applicability of article.

This article shall apply to (i) any county having a population of 500,000 or more as determined by the most recent U.S. Census, (ii) any county or city adjacent thereto, (iii) any city contiguous to such adjacent county or city, (iv) any town within such county or an adjacent county, and (v) any county having a population between 58,000 and 62,000.

The provisions of this article shall expire on July 1, 2003, if, prior to that date, no applicable locality has assessed and imposed impact fees as provided in §§ 15.2-2319.

(1989, c. 485, §§ 15.1-498.1; 1997, c. 587; 2000, c. 495.)

§§ 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 necessitated by and attributable to the new development. Impact fees may not be assessed and imposed for road repair, operation and maintenance, nor to expand existing roads to meet demand which existed prior to the new development.

"Impact fee service area" means land designated by ordinance within 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 as required by applicable construction standards of the Virginia Department of Transportation 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.

(1989, c. 485, §§ 15.1-498.2; 1992, c. 465; 1997, c. 587.)

§§ 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 attributable in substantial part to 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.

(1989, c. 485, §§ 15.1-498.2; 1992, c. 465; 1997, c. 587.)

§§ 15.2-2320. Impact fee service areas to be established.

The locality shall delineate one or more impact fee service areas within its jurisdiction. 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.

(1989, c. 485, §§ 15.1-498.3; 1992, c. 465; 1997, c. 587.)

§§ 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 within an impact fee service area and in the locality 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 valid building permits outstanding, (ii) approved conditional rezonings, special exceptions, and special use permits, and (iii) approved 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 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 ten years in the future, at the end of a ten-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 ten years in the future, at the end of a ten-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.

(1989, c. 485, §§ 15.1-498.4; 1992, c. 465; 1997, c. 587.)

§§ 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 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 certificate of occupancy. 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 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.

No impact fees shall be assessed or imposed upon a development or subdivision if the subdivider or developer has proffered conditions pursuant to §§§§ 15.2-2298 or 15.2-2303 for off-site road improvements and the proffered conditions have been accepted by the local government.

(1989, c. 485, §§ 15.1-498.6; 1992, c. 465; 1997, c. 587.)

§§ 15.2-2324. Credits against impact fee.

The value of any dedication, contribution or construction from the developer for off-site road improvements within the impact fee service area shall be treated as a credit against the impact fees imposed on the developer's project. The locality may by ordinance provide for credits for approved on-site improvements in excess of those required by the development.

The locality also shall calculate and credit against impact fees the extent to which (i) developments have already contributed to the cost of existing roads which will serve 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.

(1989, c. 485, §§ 15.1-498.7; 1992, c. 465; 1997, c. 587.)

§§ 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.

(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 within the impact fee service area as set out in the road improvement plan for the impact fee service area.

(1989, c. 485, §§ 15.1-498.9; 1992, c. 465; 1997, c. 587.)

§§ 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.

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.

(1989, c. 485, §§ 15.1-498.10; 1992, c. 465; 1997, c. 587.)

Washington Impact Fee Act

[downloaded February 11, 2005]

Revised Code of Washington (RCW) Current as of October 4, 2002

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.

[1994 c 257 §§ 24; 1993 sp.s. c 6 §§ 6; 1990 1st ex.s. c 17 §§ 43.]

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 proratable 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) 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) 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) 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) 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;(7) 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.

[1990 1st ex.s. c 17 §§ 44.]

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) 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.(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.

[1990 1st ex.s. c 17 §§ 46.]

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 six 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.

[1990 1st ex.s. c 17 §§ 47.]

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.(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) "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.(6) "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.(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.(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.

[1990 1st ex.s. c 17 §§ 48.]

RCW 82.02.100 Impact fees--Exception, mitigation fees paid under chapter 43.21C RCW.

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.

[1992 c 219 §§ 2.]

West Virginia Local Powers Act

[downloaded February 11, 2005]

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.

Wisconsin Impact Fee Act

[downloaded June 17, 2006]

[Highlighted underline/strike-out text are amendments made by Act 203, enacted March 27, 2006 and effective on April 10, 2006]

[Underline/strike-out text are amendments made by Act 477, enacted May 30, 2006 and effective on June 13, 2006]

66.0617
66.0617 Impact fees.
66.0617(1)

(1) Definitions. In this section:

66.0617(1)(a)

(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 ~~political subdivision~~ 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.

66.0617(1)(b)

(b) "Developer" means a person that constructs or creates a land development.

66.0617(1)(c)

(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 ~~political subdivision~~ municipality under this section.

66.0617(1)(d)

(d) "Land development" means the construction or modification of improvements to real property that creates additional residential dwelling units within a ~~political subdivision~~ municipality or that results in nonresidential uses that create a need for new, expanded or improved public facilities within a ~~political subdivision~~ municipality.

66.0617(1)(e)

(e) ~~"Political subdivision"~~ "Municipality" means a city, village, ~~town or county~~ or town.

66.0617(1)(f)

(f) "Public facilities" means 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 ~~other recreational facilities~~ land for athletic fields, solid waste and recycling facilities, fire protection facilities, law enforcement facilities, emergency medical facilities and libraries ~~except that, with regard to counties, "public facilities" does not include highways, as defined in s. 340.01 (22), other transportation facilities or traffic control devices~~. "Public facilities" does not include facilities owned by a school district.

66.0617(1)(g)

(g) "Service area" means a geographic area delineated by a ~~political subdivision~~ municipality within which there are public facilities.

66.0617(1)(h)

(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 ~~political subdivision~~ municipality.

66.0617(2)

(2) General.

66.0617(2)(a)

(a) ~~Subject to par. (am), a political subdivision~~ 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.

66.0617(2)(am)

(am) No county may impose an impact fee under this section to recover costs related to transportation projects.

66.0617(2)(b)

(b) Subject to par. (c), this section does not prohibit or limit the authority of a ~~political subdivision~~ municipality to finance public facilities by any other means authorized by law, except that the amount of an impact fee imposed by a ~~political subdivision~~ municipality shall be reduced, under sub. (6) (d), to compensate for any other costs of public facilities imposed by the ~~political subdivision~~ municipality on developers to provide or pay for capital costs.

66.0617(2)(c)

(c) Beginning on May 1, 1995, a ~~political subdivision~~ municipality may impose and collect impact fees only under this section.

66.0617(3)

(3) Public hearing; notice. Before enacting an ordinance that imposes impact fees, or amending an existing ordinance that imposes impact fees, a ~~political subdivision~~ 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.

66.0617(4)

(4) Public facilities needs assessment.

66.0617(4)(a)

(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 ~~political subdivision~~ 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:

66.0617(4)(a)1.

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.

66.0617(4)(a)2.

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.

66.0617(4)(a)3.

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 effect of recovering these capital costs through impact fees on the availability of affordable housing within the ~~political subdivision~~ municipality.

66.0617(4)(b)

(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 ~~political subdivision~~ municipality at least 20 days before the hearing under sub. (3).

66.0617(5)

(5) Differential fees, impact fee zones.

66.0617(5)(a)

(a) An ordinance enacted under this section may impose different impact fees on different types of land development.

66.0617(5)(b)

(b) An ordinance enacted under this section may delineate geographically defined zones within the ~~political subdivision~~ 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 ~~political subdivision~~ 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.

66.0617(6)

(6) Standards for impact fees. Impact fees imposed by an ordinance enacted under this section:

66.0617(6)(a)

(a) Shall bear a rational relationship to the need for new, expanded or improved public facilities that are required to serve land development.

66.0617(6)(b)

(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 ~~political subdivision~~ municipality.

66.0617(6)(c)

(c) Shall be based upon actual capital costs or reasonable estimates of capital costs for new, expanded or improved public facilities.

66.0617(6)(d)

(d) Shall be reduced to compensate for other capital costs imposed by the ~~political subdivision~~ 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.

66.0617(6)(e)

(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.

66.0617(6)(f)

(f) May not include amounts necessary to address existing deficiencies in public facilities.

66.0617(6)(g)

(g) Shall be payable by the developer or the property owner to the ~~political subdivision~~ municipality, ~~either~~ in full ~~or in installment payments that are approved by the political subdivision, before~~ within 14 days of the issuance of a building permit ~~may be issued~~ or ~~other required approval may be given~~ within 14 days of the issuance of an occupancy permit by the ~~political subdivision~~ municipality.

66.0617(7)

(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 ~~political subdivision~~ municipality.

66.0617(8)

(8) Requirements for impact fee revenues. Revenues from each impact ~~fees~~ 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 ~~political subdivision~~ municipality. Impact fee revenues and interest earned on impact fee revenues may be expended only for the particular capital costs for which the impact ~~fees were~~ fee was imposed, unless the fee is refunded under sub. (9).

66.0617(9)

(9) Refund of impact fees.

66.0617(9)(a)

(a) Subject to par. (b), an ~~An~~ ordinance enacted under this section shall specify that impact fees that are imposed and collected by a ~~political subdivision~~ municipality but are not used within ~~a reasonable period of time~~ 7 years after they are collected 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 7-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 ~~political subdivision~~ municipality shall consider what are appropriate planning and financing periods for the particular types of public facilities for which the impact fees are imposed.

66.0617(9)(b)

(b) The 7-year time limit for using impact fees that is specified under par. (a) may be extended for 3 years if the ~~political subdivision~~ municipality adopts a resolution stating that, due to extenuating circumstances or hardship in meeting the 7-year limit, it needs an additional 3 years to use the impact fees that were collected. The resolution shall specify

the extenuating circumstances or hardship that led to the need to adopt a resolution under this paragraph.

66.0617(10)

(10) Appeal. A ~~political subdivision~~ 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 ~~political subdivision~~ municipality.

236.45(6) Requirements for approval conditions.

(a) Notwithstanding subs. (1) and (2) (a) (intro.), a municipality, town, or county may not, as a condition of approval under this chapter, impose any fees or other charges to fund the acquisition or improvement of land, infrastructure, or other real or personal property.

(b) Any land dedication, easement, or other public improvement required by a municipality, town, or county as a condition of approval under this chapter must bear a rational relationship to a need for the land dedication, easement, or other public improvement resulting from the subdivision or other division of land.

[SECTION 26m. Initial applicability.
(1) REQUIREMENTS FOR APPROVAL CONDITIONS. The treatment of section 236.45 (6) of the statutes first applies to a certified survey map, a preliminary plat, or, if no preliminary plat was submitted, a final plat that is submitted for approval on the effective date of this subsection.]