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COMPARISON OF STATE DEVELOPMENT IMPACT FEE STATUTES

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You wanted to know (1) what development impact fees are, (2) how many states have enacted laws allowing towns to impose these fees, (3) how courts have ruled on suits challenging the fees' legality, and (4) how their imposition affects residential development. This memo answers only the first two questions; we will answer questions three and four each in a separate memo.

SUMMARY

At least 25 states, excluding Connecticut, have laws explicitly authorizing municipalities to impose fees on new developments based on the extent to which they require new roads, sewers, and other public improvements. But municipalities in other states successfully imposed these fees under laws granting them broad home rule powers. (Connecticut's municipal powers statute allows towns to levy only property taxes (CGS Sec. 7-148(c)(2)(b)). Our next memo will compare this law with home rule laws in other states that the courts interpreted as authorizing impact fees.)

The number of states adopting impact fee laws grew from three in 1986 to 25 in 1998, the last year for which we could find a comprehensive survey of state laws authorizing these fees (Olson et al, *Future of Impact Fees in Minnesota*, 24 Wm Mitchell L. Rev. 635, n. 55).

Most of the laws allow towns to impose the fees only if the proposed development creates a need for new or improved infrastructure and limit the fee amount to the infrastructure costs attributed to the development.

As Attachment 1 shows, some laws impose very detailed and comprehensive requirements (e. g. , Texas) while others impose very brief and general requirements (e. g. , New Jersey). Most require towns to first project the type of infrastructure they will need to accommodate new development in designated areas before they can impose the fees; allow them to spend impact fees only for that infrastructure; and set conditions for imposing, collecting, accounting, spending, and refunding fees.

Attachment 2 is a recent OLR memo that, in part, compares the New England states' impact fee laws ([2002-R-0582](#)).

DEVELOPMENT IMPACT FEES

Development impact fees are one-time fees towns impose on proposed development projects to defray some of the cost of constructing or improving the public infrastructure needed to service them. Towns usually impose the fees as a condition for receiving final planning and zoning approval. In doing so, they assume that subdivisions, shopping malls, office parks, and other projects are the primary reasons why they must widen a road, extend a sewer line, add more parks, or build or expand schools and that these improvements directly benefit the projects.

The fees are intended to supplement, not replace, the property tax revenue and bond proceeds towns normally use to finance major infrastructure. The practice assumes that the new infrastructure benefits most taxpayers, not just the new ones. For this reason, the town is supposed to base the fee amount only on the extent to which the new taxpayers benefit from the infrastructure. In doing so, the fees shift some of the cost of constructing infrastructure from the general property tax base to the proposed project generating the demand for the infrastructure.

Development impact fees can be distinguished from other types of exactions, the label generally given to contributions or payments a developer must make in order to receive development approval. The most common type of exaction requires a residential developer to dedicate land in his proposed subdivision for open spaces or to install streets, sidewalks, and water and sewer lines, the type of improvements that primarily benefit subdivision's residents. (Under Connecticut law, towns can require residential developers to provide parks, playgrounds, and open spaces and specify how they must grade or improve streets and provide public utilities.)

Other types of exactions require the developer to dedicate land or contribute money instead of land for improvements that benefit residents outside the subdivision. These include playgrounds and parking spaces. (Under Connecticut law, towns can require developers to pay fees in lieu of parking spaces, open space land, and low- and moderate-income housing units.)

COMPONENTS OF STATE DEVELOPMENT IMPACT FEE LAWS

Nexus

All of the laws authorizing impact fees allow towns to impose them on developments that create a need for infrastructure. In other words, they require a connection or nexus between a development and the infrastructure the town wants to develop or improve with impact fees. But the laws vary in the degree to which they define "development" or specify the types of infrastructure the fees can finance.

Development Defined

Rhode Island's law allows towns to impose fees on any person or organization undertaking a development, but it does not define that term. Wisconsin's, on the other hand, allows towns to impose fees on new or rehabilitated housing that adds more units and other types of unspecified development if they require towns to build, expand, or improve public facilities. Both states' laws emphasize the connection by requiring towns to spend the fees only on the infrastructure needed to serve the development.

Some laws allow or require towns to exempt certain types of development from fees. Rhode Island requires towns to exempt housing rehabilitation projects that do not add more units and allows them to exempt any other developments they deem appropriate. Utah allows them to exempt low-income housing and other developments "with broad public purposes. "

Eligible Infrastructure

Some laws implicitly exclude certain types of infrastructure, regardless of whether a development creates a need for them. They do this by listing the types of infrastructure that can be funded with the fees. For example, Illinois and Maryland limit the fees to road work and transportation systems, respectively, while Georgia and Idaho allow towns to impose them to fund roads, sewers, parks, water works, and public safety facilities (e. g. , fire stations). Rhode Island allows towns to impose the fees for these types of infrastructure plus schools. California and Vermont put no restrictions on the type of infrastructure towns can fund.

Texas, Utah, and Wisconsin allow towns to impose fees for improving existing infrastructure affected by new development. Georgia and Rhode Island also allow towns to impose fees to recoup the cost of under-utilized facilities towns built to accommodate new development that they had anticipated.

Planning Requirements

Most state laws require towns to impose the fees under a capital improvement plan or program that identifies their current and future infrastructure needs. Texas specifically requires these plans to be prepared by qualified professionals using generally accepted engineering and planning practices. Most of the laws also require the plans to identify the extent to which existing uses overburden the existing infrastructure based on current service level standards. This requirement insures that new developments pay only for the infrastructure demand they generate and not that caused by existing uses.

Most of the laws allow or require towns to designate areas where they will impose the fees for different types of infrastructure, thus "ensuring that impact fees paid by specific development projects benefit such projects and are used to provide and maintain a defined service level within a reasonable geographic proximity of the project site" (Georgia Department of Community Affairs, *A General Overview of Impact Fees*, May 1992).

Fee Calculation Requirements

The laws vary in the degree to which they specify the factors towns must consider when fashioning formulas or schedules for calculating fees, but most explicitly limit the amount to the development's proportionate share of the infrastructure costs. Rhode Island requires towns to base the fees on the extent to which they will use other revenues to meet existing infrastructure needs. Utah specifies the types of costs towns can base the fee on. These include land acquisition, planning and engineering, construction, and debt service. Wisconsin limits the fees to capital costs, adjusted by the value of other exactions the town imposes on the development.

Public's Role

Some laws require towns to create citizen committees to help them develop impact fee requirements, while others require them to hold public hearings on the proposed requirements.

Administration

The laws for all but five states contain similar requirements for imposing, collecting, accounting, expending, and refunding fee revenues. Arizona and Rhode Island, for example, require towns to impose fees when they issue a building permit and to collect them when they issue the certificate of occupancy. California requires towns to segregate the fees for each type of infrastructure and report on their status annually. Hawaii law requires towns to spend the fee revenues within 6 years of their receipt or refund them to the developer or his successor.

Attachment 1: Comparison of State Laws Authorizing Development Impact Fees

State/Citation	Authorized Infrastructure	Citizen Committee Required	Time for Imposition & Collection	Accounting Requirements	Time Limit for Expenditures	Capital Improvements Plan (CIP) Required	Service/Benefit Area(s) Required	Identification of Deficiencies Required
Arizona Cities Ariz. Rev. Stat. Ann. §9-463. 05 (Supp 1993).	Necessary public services. § 9-463. 05	No.	At time of building permit issuance for residential development. § 9-463. 05(B) (3).	Separate funds by facility type. § 9-463. 05(B)(2).	Not specified.	No.	No.	No.
Arizona Counties	Roads, sewer, water, neighborhood parks, flood control.	No.	Imposed at building permit issuance, collected at	Separate funds by facility type. § 11-1105(A)(3).	Must encumber within 5 years of date of collection or refund due to	Yes, must cover current fiscal year plus 4 years.	Yes. § 11-1105(A).	Yes, as part of facilities needs assessment and CIP.

Ariz. Rev. Stat. Ann. § 11-1101 <i>et seq.</i> (Supp 1993).	§ 11-1101(14)		issuance of either project building permit or certificate of occupancy. § 11-1108(A).		property owner upon filing of claim to refund (1 year claim period). § 11-1105(A).	§ 11-1101(8).		§ 11-1106.
California Cal. Gov't Code § 6000 <i>et seq.</i> (West Supp. 1993).	Unrestricted.	No.	Collected from residential development at final inspection or issuance of certificate of occupancy, whichever may occur first; collection may occur earlier in some circumstances. § 66007.	Separate fund by facility type to avoid commingling of fees with other revenues and funds; annual report required. § 66006	Must encumber or expend within 5 years of date of deposit or refund to current property owners unless local agency identifies the purpose to which the fee is to be put and demonstrates a reasonable relationship between the fee and the purpose for which it was charged. § 66001(d) & (e).	Allowed, but not required. § 66002 & § 66007(a)	No.	No.
Colorado Colo. Rev. Stat. § 29-1801 <i>et seq</i> (Supp. 1992).	Unrestricted.	No.	Not specified.	Separate fund or account by facility type or aggregate or individual land development at local government's discretion. § 29-1-803.	Not specified.	No.	No.	No.
Georgia Ga. Code Ann. § 36-71-2(16) (Supp. 1992.)	Roads, sewer, water, parks, storm water, flood control, public safety, libraries. § 36-71-2(16)	Yes, advisory capacity only. § 36-71-5.	Collected no earlier than building permit issuance, except for storm water/flood control facilities (grading permit). § 36-71-4(d).	Separate funds by facility type and service area. § 36-71-8(a).	Must refund upon application of property owner if not encumbered within 6 years and service not provided. § 36-71-9(1)	Yes, as part of adopted Comprehensive Plan. § 36-71-3(a)	Yes. § 36-71-4(b)	No.
Hawaii Haw. Rev. Stat. § 46-141 <i>et seq.</i> (Supp. 1992).	Limited to facility types identified in a county comprehensive plan or a facility needs assessment study. § 46-142(b).	No.	Imposed before issuance of grading or building per-mit, collection prior to or at building permit issuance. § 46-146.	Separate trust funds by benefit area (portion of fees that recoup cost may be transferred to any appropriate fund). § 46-144(1).	Must encumber or expend within 6 years of date of collection or refund upon application of developer or successor in interest. § 46-144(5).	Yes, unless fee is recouping previous government investment. § 46-144(3).	Yes, may be countywide if reasonable. § 46-144(2).	Yes, as part of facilities needs assessment study. § 46-143(d)(1).

<p>Idaho § 67-8201 <i>et seq.</i> (Supp. 1992).</p>	<p>Roads, sewer, water, parks, storm water, flood control, public safety § 67-8203(24)</p>	<p>Yes, advisory capacity only. § 67-8205.</p>	<p>Collection no earlier than commencement of construction, issuance of building permit, or issuance of manufactured home installation, or as agreed to by developer. § 67-8204(3).</p>	<p>Separate accounts, within the capital projects fund, by facility type and service area. § 67-8210(1).</p>	<p>Must expended within 10 years of date of collection (20 years for sewer and drainage fees). § 67-8210(4) & § 67-8211.</p>	<p>Yes, must be based on projections of land uses and population over at least a 20-year period. § 67-8206.</p>	<p>Yes. § 67-8203(26).</p>	<p>Yes, as part of the CIP. § 67-8208.</p>
<p>Illinois 605 Ill. Comp. Stat. Ann. § 5-901 <i>et seq.</i> (Smith-Hurd 1993).</p>	<p>Roads directly affected by traffic demands generated by the new development charged ("specifically and uniquely attributable"). § 5-904.</p>	<p>Yes, advisory only. § 5-905(b) & § 5-907 to § 5-909.</p>	<p>Imposed at final plan application or building permit issuance if no plan approval necessary, collection at building permit issuance for one single-family unit construction, at certificate of occupancy for all other development 10-year installment pay plan authorized. § 5-912.</p>	<p>Separate accounts by service area. § 5-913.</p>	<p>Must encumbered within 5 years of date of collection or refund to fee payer or success in interest, upon submittal of petition. § 5-916.</p>	<p>Yes, comprehensive road improvement plan based on land use assumptions projected over 10-year period. § 5-905(h) & § 5-910.</p>	<p>Yes, may be jurisdiction-wide if reasonable. § 5-903.</p>	<p>Yes, as part of comprehensive road improvement plan. § 5-910(1).</p>
<p>Indiana Ind. Code Ann. § 36-7-4-1300 <i>et seq.</i> (Burns Supp. 1992).</p>	<p>Roads, sewer, water, parks, drainage, flood control. § 36-7-4-1308.</p>	<p>Yes, advisory only. § 36-7-4-1312(b)</p>	<p>Imposed no later than 30 days after issuance of location permit or after submittal of development plan, whichever is earlier; collection upon issuance of building permit if fees total less than \$ 5,000, ordinance must provide for installment payment plan. § 36-7-4-1322 & § 36-7-4-1324.</p>	<p>Separate accounts by facility type and impact zone. § 36-7-4-1329(d)</p>	<p>Refund upon application of fee payer required if facilities for which fee is imposed not completed within 2 years after date indicated in zone plan, if fee payer is unreasonably denied use of benefit of facilities, or if local government has failed to make reasonable progress on construction by the date specified in the zone plan or within 6 years of issuance of building permits, whichever is earlier. § 36-7-4-1332.</p>	<p>Yes, zone improvement plan based on projected development over 10-year period. § 36-7-4-1318(b)</p>	<p>Yes, "impact zones." § 36-7-4-1315.</p>	<p>Yes, as part of zone improvement plan. Deficiencies must be corrected within 10 years. § 36-7-4-1318.</p>

Maine Me. Rev. Stat. Ann. Tit 30-A, § 4354 (West Supp. 1992).	Roads, sewer, water, parks, fire protection, solid waste § 4354(1)(A).	No.	Not specified.	Must be segregated from general revenues. § 4354(2)(B).	Must expend funds according to reasonable schedule established in comprehensive plan or refund fees. § 4354(2)(D).	Yes, as part of comprehensive plan. § 4354(2)(C).	No.	No.
Maryland MD Code Ann Corps Sec 44	Ride sharing or bus systems. § 44 (b)	No.	No.	No.	No.	No.	Yes: special taxing district to finance system. § 44 (b)	No.
Massachusetts (Barnstable County (Cape Cod) municipalities only). 1989 Mass. Acts 716, § 15.	Any facilities identified in local comprehensive plan. § 15 (c) (3).	No.	Specified in Cape Code Commission's regulations § 15 (a).	Fees must be held in a separate account § 15(b).	Fees must be spent within a reasonable period of time or refunded to applicant or successor § 15 (c) (4).	No.	No.	No.
Nevada Nev. Rev. Stat. §278B. 010 <i>et seq.</i> (1991).	Roads, sewer water, storm water, drainage. §278B. 020	Yes, advisory only. §278B. 150	Not specified.	Not specified.	Refund upon request of property owner if construction on facilities in CIP not initiated within 5 years or fees not expended within 10 years §278B. 260.	Yes, including needs for period of 10 years or less based on use assumptions projected for at least 10 years. §278B. 170.	Yes. §278B. 100	Yes, as part of CIP. §278B. 170.
New Hampshire N. H. Rev. Stat. Ann. § 674: 21 (Supp. 1992).	Roads, sewer, water, parks, storm water, drainage, flood control, municipal office facilities, solid waste, public safety, libraries § 674: 21(V).	No.	Imposed before or as condition for issuance of building permit; collection as condition for issuance of certificate of occupancy. § 674: 21(V) (d).	Must be segregated from general fund and accounted for by fee. § 674: 21(V)(c)	Must expend within 6 years of collection or within reasonable time established by ordinance (not to exceed 6 years), or be refunded. § 674: 21(V)(e).	Yes. § 674: 21(V)(b).	No.	No.
New Jersey 27: 1c-1 N. J. Stat. Ann.	Roads, sewer, water, drainage § 40: 55D-42	No.	Imposed as condition for approval of subdivision or site plan; collection time not specified.	Not specified.	Not specified.	Yes, circulation and/or comprehensive utility service plan. § 40: 55D-42	Yes, facilities within a common and related area. § 40: 55D-42	No.

§ 40: 55D-42 (West 1991)			§ 40: 55D-42					
New Mexico 1993 New Mexico Law Ch. 122. 5-8-1	Roads, sewer, water, storm water, drainage, flood control, parks, fire, police, rescue. § 2(D).	Yes, advisory only. § 37	Imposition at earliest possible time; collection at latest possible time but no earlier than issuance of building permit. § 8.	Separate accounts by facility type and service area. § 16.	Refund upon request of property owner required if facility construction not complete within 7 years after collection. § 17.	Yes, based on system-wide land use assumptions for period of at least 5 years. § 2.	Yes, may include extraterritorial jurisdiction of municipality. § 20.	Yes, as part of CIP. § 6.
Oregon Or. Rev. Stat. § 223. 297 <i>et</i> <i>seq.</i> (1991)	Roads, sewer, water, drainage, flood control, parks. § 223. 299(1)(a).	No.	Not specified.	Separate account by facility type. § 223. 311.	Not specified.	Yes. § 223. 309.	No.	No.
Pennsylvania Pa. Stat. Ann. Tit. 53, § 10501- A <i>et seq.</i> (Supp. 1992)	Roads. § 10501-A.	Yes, advisory only. § 10504-A(b)	Imposition at preliminary or tentative application for development, subdivision or planned residential development; collection at issuance of building permit. § 10505-A(c) & (e)	Separate accounts by service area. § 10505-A(d).	Refund if construction of improvements not commenced within 3 years of date shown in CIP. § 10505-A(g).	Yes, must reflect land use assumptions projected over period of at least 5 years. § 10504-A(a).	Yes, not to exceed 7 square miles. § 10502-4(a).	Yes, as part of CIP. § 10504-A(d)
Rhode Island R. I. Gen Laws § 44-22. 4-1	Water, sewer, drainage, roads, bridges, parks, public safety, schools and libraries, and other facilities identified in capital improvement plan. § 45-22. 4-3 (7).	No.	Imposed when building permit issued or other development approval granted and collected when certificate of occupancy or other final approval granted. § 45-22. 4-5(b).	Deposited in special proprietary fund. § 45-22. 4-5(a) (1).	Fees must be spent within 8 years, but town may extend deadline for up to 4 years or refund taxpayer or successor. § 44-22. 4-5 (a) (3).	Yes. Town must base fees on a need assessments for each type of infrastructure the fees will fund. § 44-22. 4-4(a).	No.	Yes, must be shown in CIP. § 45. 22. 4-4(d) (2)(i).
Texas Tex. Local Gov't Code Ann. § 395. 001 <i>et seq.</i> (West	Roads, sewer, water, storm water, drainage, flood control § 395. 001(1).	Yes, advisory only. § 395. 058.	For fees adopted after leg- islation enacted, imposi- tion before or when plan is	Separate accounts by facility type and service area. § 395. 024.	Refund to property owner required if facilities' service is denied, facilities construction has not commenced	Yes, based on land use assumption projected over a period of at least 10 years.	Yes, for roads must not exceed distance equal to average trip length but in no case more than 3 miles.	Yes, as part of CIP. § 395. 014(a).

Supp. 1993).			recorded; collection at time of plan recordation, building permit, or certification of occupancy issuance, or at time of connection. § 395. 016.		within 2 years, service is not provided within 5 years, or fees not expended within 10 years after date of collection. § 395. 025.	§ 395. 046.	§ 395. 001(a).	
Utah § 11-26-101	Water, sewer, drainage, power, roads, parks, and public safety facilities and improvements to existing facilities. § 11-36-102 (12).	No.	Not specified.	Fees must be deposited in separate, interest bearing account. § 11-36-301.	Fees must be spent within 6 years after receipt for the specific facility for which they were collected, but town can extend deadline for cause or refund fee to developer with interest. § 11-36-302.	Yes. § 11-36-201(2).	Yes. § 11-36-202(2).	Yes, if deficiency caused by new growth. § 11-36-202(4).
Vermont Vt. Stat. Ann. Tit. 24 § 5200 et seq. (1992).	Unrestricted.	No.	Imposition as condition of issuance of zoning or subdivision permit; collection may be before issuance of zoning or subdivision permit; installment payments authorized. § 5204.	Annual accounting required. § 5203(e).	Expend within 6 years of collection or refund to property owner required. § 5203(e).	Yes. § 5203(a)(1).	No.	No.
Virginia Va. Code Ann. §15. 1-498. 1 et seq. (Michie 1989 & Supp. 1992). 15. 2-2318	Roads. §15. 1-498. 2.	Yes. §15. 1-498. 2.	Imposition before or at time of site plan or subdivision approval; collection at issuance of certificate of occupancy; installment payment plan authorized. §15. 1-498. 6.	Separate accounts by service area. §15. 1-498. 9.	Refund required if facility construction not completed within 15 years. §15. 1-498. 10.	Yes, adopted as amendment to comprehensive plan or 6-year plan for county secondary roads. §15. 1-498. 4.	Yes. §15. 1-498. 3.	Yes, as part of CIP. §15. 1-498. 4(1).
Washington		No.					Yes.	Yes.

Wash. Rev. Code Ann. § 82. 02. 050 <i>et seq.</i> (West Supp. 1993).	Roads, parks, schools, fire protection. § 82. 02. 090(7).		Imposition as condition of development approval; collection not specified. § 82. 02. 090(3)	Separate accounts by facility type. § 82. 02. 070(1).	Encumber or expand within 6 years of date of collection or refund to property owner. § 82. 02. 070(3).	Yes, as part of comprehensive plan. § 82. 02. 050(4)	§ 82. 02. 060(6)	§ 82. 02. 050(4)
West Virginia W. Va. Code § 7-20-1 <i>et seq.</i> (1993)	Roads, sewer, water, parks, storm water, drainage, flood control, police, fire protection, emergency medical rescue, schools. § 7-20-3(a)	No.	Levied as a condition of issuance of site plan or subdivision approval, issuance of building permit, approval of certificate of occupancy, or other development or construction approval. § 7-20-3(g).	Separate account by facility type; annual accounting required. § 7-20-8(d).	Expend within 6 years from date of collection or refund upon application of property owners. § 7-20-9(a).	Yes. § 7-20-6(a)(7).	Yes, restricted to areas wherein development projects are located. § 7-20-8(a).	Yes, as part of CIP. § 7-20-7(b).
Wisconsin § 66. 0617.	Roads, water, sewer, drainage, recreational and public safety facilities, and libraries. § 66. 0617(1)(f).	No.	Must be imposed and collect prior to issuing building permit. § 66. 0617(6)(g).	Fees must be placed in a segregated interest bearing account. § 66. 0617(8).	Ordinance must specify deadline and require refund if funds not used. § 66. 0617(9).	Needs assessment. § 66. 0617(4).	Yes, local option. § 66. 0617(5)(b).	Yes, if identified in required needs assessment. §66. 0671(4)(a)1.

Source: Leitner and Schoettle, "Survey of State Impact Fee Enabling Legislation," in Freilich and Bushek, *Exactions, Impact Fees and Dedications: Shaping Land-Use Development and Funding Infrastructure in the Dolan Ear* (1995), modified and updated by OLR.

JR: ro