

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 429 Session of
2009

INTRODUCED BY PETRI, CALTAGIRONE, CLYMER, GRUCELA, HENNESSEY,
MELIO, O'NEILL, SIPTROTH AND YOUNGBLOOD, FEBRUARY 13, 2009

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, FEBRUARY 13, 2009

AN ACT

1 Amending the act of July 31, 1968 (P.L.805, No.247), entitled,
2 as amended, "An act to empower cities of the second class A,
3 and third class, boroughs, incorporated towns, townships of
4 the first and second classes including those within a county
5 of the second class and counties of the second through eighth
6 classes, individually or jointly, to plan their development
7 and to govern the same by zoning, subdivision and land
8 development ordinances, planned residential development and
9 other ordinances, by official maps, by the reservation of
10 certain land for future public purpose and by the acquisition
11 of such land; to promote the conservation of energy through
12 the use of planning practices and to promote the effective
13 utilization of renewable energy sources; providing for the
14 establishment of planning commissions, planning departments,
15 planning committees and zoning hearing boards, authorizing
16 them to charge fees, make inspections and hold public
17 hearings; providing for mediation; providing for transferable
18 development rights; providing for appropriations, appeals to
19 courts and penalties for violations; and repealing acts and
20 parts of acts," in general provisions, further providing for
21 definitions; amending provisions relating to municipal
22 capital improvements; and providing for development impact
23 fees.

24 The General Assembly of the Commonwealth of Pennsylvania
25 hereby enacts as follows:

26 Section 1. The definition of "impact fee" in section 502-A
27 of the act of July 31, 1968 (P.L.805, No.247), known as the
28 Pennsylvania Municipalities Planning Code, reenacted and amended

December 21, 1988 (P.L.1329, No.170) and added December 19, 1990 (P.L.1343, No.209), is amended and the section is amended by adding a definition to read:

Section 502-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:

* * *

["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.]

* * *

"Transportation 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.

* * *

Section 2. Section 503-A of the act, amended or added December 19, 1990 (P.L.1343, No.209) and June 22, 2000 (P.L.495, No.68), is amended to read:

Section 503-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 transportation impact fee ordinances and, thereafter, may establish, at the time of municipal approval of any new development or subdivision, the amount of [an] a transportation 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

1 municipality's subdivision and land development ordinance. Every
2 ordinance adopted pursuant to this act shall include, but not be
3 limited to, provisions for the following:

4 (1) The conditions and standards for the determination
5 and imposition of transportation impact fees consistent with
6 the provisions of this act.

7 (2) The agency, body or office within the municipality
8 which shall administer the collection, disbursement and
9 accounting of transportation impact fees.

10 (3) The time, method and procedure for the payment of
11 transportation impact fees.

12 (4) The procedure for issuance of any credit against or
13 reimbursement of transportation impact fees which an
14 applicant may be entitled to receive consistent with the
15 provisions of this act.

16 (5) Exemptions or credits which the municipality may
17 choose to adopt. In this regard the municipality shall have
18 the power to:

19 (i) Provide a credit of up to 100% of the applicable
20 transportation impact fees for all new development and
21 growth which constitutes affordable housing to low- and
22 moderate-income persons.

23 (ii) Provide a credit of up to 100% of the
24 applicable transportation impact fees for growth which
25 are determined by the municipality to serve an overriding
26 public interest.

27 (iii) Exempt de [minimus] minimis applications from
28 transportation impact fee requirements. If such a policy
29 is adopted, the definition of de [minimus] minimis shall
30 be contained in the ordinance.

1 (b) No municipality shall have the power to require as a
2 condition for approval of a land development or subdivision
3 application the construction, dedication or payment of any
4 offsite improvements or capital expenditures of any nature
5 whatsoever or impose any contribution in lieu thereof, exaction
6 fee, or any connection, tapping or similar fee except as may be
7 specifically authorized under this act.

8 (c) No municipality may levy [an] a transportation impact
9 fee prior to the enactment of a municipal transportation impact
10 fee ordinance adopted in accordance with the procedures set
11 forth in this act, except as may be specifically authorized by
12 the provisions of this act. A transportation impact fee shall be
13 imposed by a municipality within a service area or areas only
14 where such fees have been determined and imposed pursuant to the
15 standards, provisions and procedures set forth herein.

16 (d) [Impact] Transportation impact fees may be used for
17 those costs incurred for improvements designated in the
18 transportation capital improvement program which are
19 attributable to new development, including the acquisition of
20 land and rights-of-way; engineering, legal and planning costs;
21 and all other costs which are directly related to road
22 improvements within the service area or areas, including debt
23 service. [Impact] Transportation impact fees shall not be
24 imposed or used for costs associated with any of the following:

25 (1) Construction, acquisition or expansion of municipal
26 facilities other than capital improvements identified in the
27 transportation capital improvements plan required by this
28 act.

29 (2) Repair, operation or maintenance of existing or new
30 capital improvements.

1 (3) Upgrading, updating, expanding or replacing existing
2 capital improvements to serve existing developments in order
3 to meet stricter safety, efficiency, environmental or
4 regulatory standards not attributable to new development.

5 (4) Upgrading, updating, expanding or replacing existing
6 capital improvements to remedy deficiencies in service to
7 existing development or fund deficiencies in existing
8 municipal capital improvements resulting from a lack of
9 adequate municipal funding over the years for maintenance or
10 capital construction costs.

11 (5) Preparing and developing the land use assumptions,
12 roadway sufficiency analysis and transportation capital
13 improvement plan, except that transportation impact fees may
14 be used for no more than a proportionate amount of the cost
15 of professional consultants incurred in preparing a roadway
16 sufficiency analysis of infrastructure within a specified
17 transportation service area, such allowable proportion to be
18 calculated by dividing the total costs of all road
19 improvements in the adopted transportation capital
20 improvement program within the transportation service area
21 attributable to projected future development within the
22 service area, as defined in section 504-A(e)(1)(iii), by the
23 total costs of all road improvements in the adopted
24 transportation capital improvement program within the
25 specific transportation service area, as defined in section
26 504-A.

27 (e) Nothing in this act shall be deemed to alter or affect a
28 municipality's existing power to require an applicant for
29 municipal approval of any new development or subdivision from
30 paying for the installation of onsite improvements as provided

1 for in a municipality's subdivision and land development
2 ordinance as authorized by this act.

3 (f) No municipality may delay or deny any application for
4 building permit, certificate-of-occupancy, development or any
5 other approval or permit required for construction, land
6 development, subdivision or occupancy for the reason that any
7 project of an approved capital improvement program has not been
8 completed.

9 (g) A municipality which has enacted an impact fee ordinance
10 on or before June 1, 1990, may for a period not to exceed one
11 year from the effective date of this article, adopt an impact
12 fee ordinance to conform with the standards and procedures set
13 forth in this article. Where a fee previously imposed pursuant
14 to an ordinance in effect on June 1, 1990, for transportation
15 improvements authorized by this article is greater than the
16 recalculated fee due under the newly adopted ordinance, the
17 individual who paid the fee is entitled to a refund of the
18 difference. If the recalculated fee is greater than the
19 previously paid fee, there shall be no additional charge.

20 (h) The powers provided by this section may be exercised by
21 two or more municipalities, other than counties, which have
22 adopted a joint municipal comprehensive plan pursuant to Article
23 XI through a joint municipal authority, subject to the
24 conditions and procedures set forth in this article.

25 Section 3. Sections 504-A(a), (b), (e), (f) and (g) and 505-
26 A of the act, amended June 22, 2000 (P.L.495, No.68), are
27 amended to read:

28 Section 504-A. Transportation Capital Improvements Plan.--

29 (a) (1) A transportation capital improvements plan shall be
30 prepared and adopted by the governing body of the municipality

1 prior to the enactment of any transportation impact fee
2 ordinance.

3 (2) In lieu of preparing a transportation capital
4 improvements plan, the governing body of the municipality may
5 elect to have the municipality's comprehensive plan and maps
6 serve as a transportation capital improvements plan, provided
7 that:

8 (i) the municipality's comprehensive plan and maps
9 contain the necessary information for the transportation
10 impact fee advisory committee and governing body to
11 perform the calculations, make the recommendations and
12 carry out other duties required by this article; and

13 (ii) the municipality's comprehensive plan and maps
14 have been adopted or revised within ten years of the date
15 of enactment of a transportation impact fee ordinance.

16 (3) The municipality shall provide qualified
17 professionals to assist the transportation impact fee
18 advisory committee or the planning commission in the
19 preparation of the transportation capital improvements plan
20 or the transportation elements of the municipality's
21 comprehensive plan and calculation of the transportation
22 impact fees to be imposed to implement the plan in accordance
23 with the procedures, provisions and standards set forth in
24 this act.

25 (b) (1) [An] A transportation impact fee advisory committee
26 shall be [created] established by resolution of a
27 municipality intending to adopt a transportation impact fee
28 ordinance. The resolution shall describe the geographical
29 area or areas of the municipality for which the advisory
30 committee shall develop the land use assumptions and conduct

1 the roadway sufficiency analysis studies.

2 (2) The advisory committee shall consist of no fewer
3 than 7 nor more than 15 members, all of whom shall serve
4 without compensation. The governing body of the municipality
5 shall appoint as members of the advisory committee persons
6 who are either residents of the municipality or conduct
7 business within the municipality and are not employees or
8 officials of the municipality. Not less than [40%] 25% of the
9 members of the advisory committee shall be representatives of
10 the real estate, commercial and residential development, and
11 building industries. The municipality may also appoint
12 traffic or transportation engineers or planners to serve on
13 the advisory committee provided the appointment is made after
14 consultation with the advisory committee members. The traffic
15 or transportation engineers or planners appointed to the
16 advisory committee may not be employed by the municipality
17 for the development of or consultation on the roadways
18 sufficiency analysis which may lead to the adoption of the
19 transportation capital improvements plan.

20 (3) The governing body of the municipality may elect to
21 designate the municipal planning commission appointed
22 pursuant to Article II as the transportation impact fee
23 advisory committee. If the existing planning commission does
24 not include members representative of the real estate,
25 commercial and residential development, and building
26 industries at no less than [40%] 25% of the membership, the
27 governing body of the municipality shall appoint the
28 sufficient number of representatives of the aforementioned
29 industries who reside in the municipality or conduct business
30 within the municipality to serve as ad hoc voting members of

1 the planning commission whenever such commission functions as
2 the impact fee advisory committee.

3 (4) No transportation impact fee ordinance may be
4 invalidated as a result of any legal action challenging the
5 composition of the advisory committee which is not brought
6 within 90 days following the first public meeting of [said]
7 the advisory committee.

8 (5) The advisory committee shall serve in an advisory
9 capacity and shall have the following duties:

10 (i) To make recommendations with respect to land use
11 assumptions, the development of comprehensive road
12 improvements and transportation impact fees.

13 (ii) To make recommendations to approve, disapprove
14 or modify a capital improvement program by preparing a
15 written report containing these recommendations to the
16 municipality.

17 (iii) To monitor and evaluate the implementation of
18 a capital improvement program and the assessment of
19 transportation impact fees, and report annually to the
20 municipality with respect to the same.

21 (iv) To advise the municipality of the need to
22 revise or update the land use assumptions, capital
23 improvement program or transportation impact fees.

24 * * *

25 (e) (1) Utilizing the information provided by the land
26 use assumption and the roadway sufficiency analysis as the
27 basis for determination of the need for road improvements to
28 remedy existing deficiencies and accommodate future projected
29 traffic volumes, the advisory committee shall identify those
30 capital projects which the municipality should consider for

1 adoption in its transportation capital improvements plan and
2 shall recommend the delineation of the transportation service
3 area or areas. The capital improvement plan shall be
4 developed in accordance with generally accepted engineering
5 and planning practices. The capital improvement program shall
6 include projections of all designated road improvements in
7 the capital improvement program. The total cost of the road
8 improvements shall be based upon estimated costs, using
9 standard traffic engineering standards, with a 10% maximum
10 contingency which may be added to said estimate. These costs
11 shall include improvements to correct existing deficiencies
12 with identified anticipated sources of funding and timetables
13 for implementation. The transportation capital improvements
14 plan shall include the following components:

15 (i) A description of the existing highways, roads
16 and streets within the transportation service area and
17 the road improvements required to update, improve, expand
18 or replace such highways, roads and streets in order to
19 meet the preferred level of service and usage and
20 stricter safety, efficiency, environmental or regulatory
21 standards not attributable to new development.

22 (ii) A plan specifying the road improvements within
23 the transportation service area attributable to
24 forecasted pass-through traffic so as to maintain the
25 preferred level of service after existing deficiencies
26 identified by the roadway sufficiency analysis have been
27 remedied.

28 (iii) A plan specifying the road improvements or
29 portions thereof within the transportation service area
30 attributable to the projected future development,

1 consistent with the adopted land use assumptions, in
2 order to maintain the preferred level of service after
3 accommodation for pass-through traffic and after existing
4 deficiencies identified in the roadway sufficiency
5 analysis have been remedied.

6 (iv) The projected costs of the road improvements to
7 be included in the transportation capital improvements
8 plan, calculating separately for each project by the
9 following categories:

10 (A) The costs or portion thereof associated with
11 correcting existing deficiencies as specified in
12 subparagraph (i).

13 (B) The costs or portions thereof attributable
14 to providing road improvements to accommodate
15 forecasted pass-through trips as specified in
16 subparagraph (ii).

17 (C) The costs of providing necessary road
18 improvements or portions thereof attributable to
19 projected future development as specified in
20 subparagraph (iii), provided that no more than 50% of
21 the cost of the improvements to any highway, road or
22 street which qualifies as a State highway or portion
23 of the rural State highway system as provided in
24 section 102 of the act of June 1, 1945 (P.L.1242, No.
25 428), known as the "State Highway Law," may be
26 included.

27 (v) A projected timetable and proposed budget for
28 constructing each road improvement contained in the plan.

29 (vi) The proposed source of funding for each capital
30 improvement included in the road plan. This shall include

1 anticipated revenue from the Federal Government, State
2 government, municipality, transportation impact fees and
3 any other source. The estimated revenue for each capital
4 improvement in the plan which is to be provided by
5 transportation impact fees shall be identified separately
6 for each project.

7 (2) The source of funding required for projects to
8 remedy existing deficiencies as set forth in paragraph (1)(i)
9 and the road improvements attributable to forecasted pass-
10 through traffic as set forth in paragraph (1)(ii) shall be
11 exclusive of funds generated from the assessment of
12 transportation impact fees.

13 (3) Upon the completion of the transportation capital
14 improvements plan and prior to its adoption by the governing
15 body of the municipality and the enactment of a municipal
16 transportation impact fee ordinance, the advisory committee
17 shall hold at least one public hearing for consideration of
18 the plan. Notification of the public hearing shall comply
19 with the requirement of section 107. The plan shall be
20 available for public inspection at least ten working days
21 prior to the date of the public hearing. After presentation
22 of the recommendation by the advisory committee or its
23 representatives at a public meeting of the governing body,
24 the governing body may make such changes to the plan prior to
25 its adoption as the governing body deems appropriate
26 following review of the public comments made at the public
27 hearing.

28 (4) The governing body may periodically, but no more
29 frequently than annually, request the transportation impact
30 fee advisory committee to review the capital improvements

1 plan and transportation impact fee charges and make
2 recommendations for revisions for subsequent consideration
3 and adoption by the governing body based only on the
4 following:

5 (i) New subsequent development which has occurred in
6 the municipality.

7 (ii) Capital improvements contained in the capital
8 improvements plan, the construction of which has been
9 completed.

10 (iii) Unavoidable delays beyond the responsibility
11 or control of the municipality in the construction of
12 capital improvements contained in the plan.

13 (iv) Significant changes in the land use
14 assumptions.

15 (v) Changes in the estimated costs of the proposed
16 transportation capital improvements, which may be
17 recalculated by applying the construction cost index as
18 published in the American City/County magazine or the
19 Engineering News Record.

20 (vi) Significant changes in the projected revenue
21 from all sources listed needed for the construction of
22 the transportation capital improvements.

23 (f) Any improvements to Federal-aid or State highways to be
24 funded in part by transportation impact fees shall require the
25 approval of the Department of Transportation and, if necessary,
26 the United States Department of Transportation. Nothing in this
27 act shall be deemed to alter or diminish the powers, duties or
28 jurisdiction of the Department of Transportation with respect to
29 State highways or the rural State highway system.

30 (g) Two or more municipalities may, upon agreement, appoint

1 a joint transportation impact fee advisory committee which may
2 develop roadway sufficiency analyses and transportation capital
3 improvements plans for the participating municipalities. The
4 members of the joint advisory committee must be either residents
5 of or conduct business within one of the participating
6 municipalities.

7 Section 505-A. Establishment and Administration of Impact
8 Fees.--

9 (a) (1) The transportation impact fee for transportation
10 capital improvements shall be based upon the total costs of
11 the road improvements included in the adopted capital
12 improvement plan within a given transportation service area
13 attributable to and necessitated by new development within
14 the service area as calculated pursuant to section 504-A(e)
15 (1)(iv)(C), divided by the number of anticipated peak hour
16 trips generated by all new development consistent with the
17 adopted land use assumptions and calculated in accordance
18 with the Trip Generation Manual published by the Institute of
19 Transportation Engineers, fourth or subsequent edition as
20 adopted by the municipality by ordinance or resolution to
21 equal a per trip cost for transportation improvements within
22 the service area.

23 (2) The specific transportation impact fee for a
24 specific new development or subdivision within the service
25 area for road improvements shall be determined as of the date
26 of preliminary land development or subdivision approval by
27 multiplying the per trip cost established for the service
28 area as determined in section 503-A(a) by the estimated
29 number of peak hour trips to be generated by the new
30 development or subdivision using generally accepted traffic

1 engineering standards.

2 (3) A municipality may authorize or require the
3 preparation of a special transportation study in order to
4 determine traffic generation or circulation for a new
5 nonresidential development to assist in the determination of
6 the amount of the transportation impact fee for such
7 development or subdivision. The municipality shall set forth
8 by ordinance the circumstances in which such a study should
9 be authorized or required, provided however, that no special
10 transportation study shall be required when there is no
11 deviation from the land use assumptions resulting in
12 increased density, intensity or trip generation by a
13 particular development. A developer or municipality may,
14 however, at any time, voluntarily prepare and submit a
15 traffic study for a proposed development or may have such a
16 study prepared at its expense after the development is
17 completed to include actual trips generated by the
18 development for use in any appeal as provided for under this
19 act. The special transportation study shall be prepared by a
20 qualified traffic or transportation engineer using procedures
21 and methods established by the municipality based on
22 generally accepted transportation planning and engineering
23 standards. The study, where required by the municipality,
24 shall be submitted prior to the imposition of [an] a
25 transportation impact fee and shall be taken into
26 consideration by the municipality in increasing or reducing
27 the amount of the transportation impact fee for the new
28 development for the amount shown on the transportation impact
29 fee schedule adopted by the municipality.

30 (b) The governing body shall enact [an] a transportation

1 impact fee ordinance setting forth a description of the
2 boundaries and a transportation impact fee schedule for each
3 transportation service area. At least ten working days prior to
4 the adoption of the ordinance at a public meeting, the ordinance
5 shall be available for public inspection. The transportation
6 impact fee ordinance shall include, but not be limited to, those
7 provisions set forth in section 503-A(a) and conform with the
8 standards, provisions and procedures set forth in this act.

9 (c) (1) A municipality may give notice of its intention to
10 adopt [an] a transportation impact fee ordinance by
11 publishing a statement of such intention twice in one
12 newspaper of general circulation in the municipality. The
13 first publication shall not occur before the adoption of the
14 resolution by which the municipality establishes its
15 transportation impact fee advisory committee. The second
16 publication shall occur not less than one nor more than three
17 weeks thereafter.

18 (2) A municipal transportation impact fee ordinance
19 adopted under and pursuant to this act may provide that the
20 provisions of the ordinance may have retroactive application,
21 for a period not to exceed 18 months after the adoption of
22 the resolution [creating an] establishing a transportation
23 impact fee advisory committee pursuant to section 504-A(b)
24 (1), to preliminary or tentative applications for land
25 development, subdivision or PRD with the municipality on or
26 after the first publication of the municipality's intention
27 to adopt [an] a transportation impact fee ordinance;
28 provided, however, that the transportation impact fee imposed
29 on building permits for construction of new development
30 approved pursuant to such applications filed during the

1 period of [pendancy] pendency shall not exceed \$1,000 per
2 anticipated peak hour trip as calculated in accordance with
3 the generally accepted traffic engineering standards as set
4 forth under the provisions of subsection (a)(1) or the
5 subsequently adopted fee established by the ordinance,
6 whichever is less.

7 (3) No action upon an application for land development,
8 subdivision or PRD shall be postponed, delayed or extended by
9 the municipality because adoption of a municipal
10 transportation impact fee ordinance is being considered.

11 Furthermore, the adoption of [an] a transportation impact fee
12 ordinance more than 18 months after adoption of a resolution
13 [creating the] establishing the transportation impact fee
14 advisory committee shall not be retroactive or applicable to
15 plats submitted for preliminary or tentative approval prior
16 to the legal publication of the proposed transportation
17 impact fee ordinance and any transportation impact fees
18 collected pursuant to this subsection shall be refunded to
19 the payor of such fees; provided the adoption of the
20 transportation impact fee ordinance was not delayed due to
21 the initiation of any litigation challenging the adoption of
22 such ordinance.

23 (d) Any transportation impact fees collected by a
24 municipality pursuant to a municipal transportation impact fee
25 ordinance shall be deposited by the municipality into an
26 interest-bearing fund account designated solely for
27 transportation impact fees, clearly identifying the
28 transportation service area from which the transportation impact
29 fee was received. Funds collected in one transportation service
30 area must be accounted for and expended within that

1 transportation service area, and such funds shall only be
2 expended for that portion of the transportation capital
3 improvements identified as being funded by transportation impact
4 fees under the transportation capital improvements plan.

5 Notwithstanding any other provisions of this act, municipalities
6 may expend transportation impact fees paid by an applicant on
7 projects not contained in the adopted transportation capital
8 improvement plan or may provide credit against transportation
9 impact fees for the value of any construction projects not
10 contained in the transportation capital improvement plan which
11 are performed at the applicant's expense if all of the following
12 criteria are met:

13 (1) The applicant has provided written consent to use of
14 its collected transportation impact fees or the provision of
15 such credit against the applicant's transportation impact
16 fees for specific transportation projects which are not
17 included in the transportation capital improvement plan.

18 (2) The alternative transportation projects, whether
19 highway or multimodal, have as their purpose the reduction of
20 traffic congestion or the removal of vehicle trips from the
21 roadway network.

22 (3) The municipality amends its transportation capital
23 improvement plan components required by section 504-A(e) (1)
24 (vi) to provide replacement of the collected transportation
25 impact fees transferred to transportation projects outside
26 the approved transportation capital improvement plan from
27 sources other than transportation impact fees or developer
28 contributions within three years of completion of the
29 alternative projects to which the transferred transportation
30 impact fees were applied or for which credit was provided.

1 All interest earned on such funds shall become funds of that
2 account. The municipality shall provide that an accounting be
3 made annually for any fund account containing transportation
4 impact fee proceeds and earned interest. Such accounting
5 shall include, but not be limited to, the total funds
6 collected, the source of the funds collected, the total
7 amount of interest accruing on such funds and the amount of
8 funds expended on specific transportation improvements.

9 Notice of the availability of the results of the accounting
10 shall be included and published as part of the annual audit
11 required of municipalities. A copy of the report shall also
12 be provided to the transportation advisory committee.

13 (e) All transportation impact fees imposed under the terms
14 of this act shall be payable at the time of the issuance of
15 building permits for the applicable new development or
16 subdivision. The municipality may not require the applicant to
17 provide a guarantee of financial security for the payment of any
18 transportation impact fees, except the municipality may provide
19 for the deposit with the municipality of financial security in
20 an amount sufficient to cover the cost of the construction of
21 any road improvement contained in the transportation capital
22 improvement plan which is performed by the applicant.

23 (f) An applicant shall be entitled to a credit against the
24 transportation impact fee in the amount of the fair market value
25 of any land dedicated by the applicant to the municipality for
26 future right-of-way, realignment or widening of any existing
27 roadways or for the value of any construction of road
28 improvements contained in the transportation capital improvement
29 program which is performed at the applicant's expense. The
30 amount of such credit for any capital improvement constructed

1 shall be the amount allocated in the capital improvement
2 program, including contingency factors, for such work. The fair
3 market value of any land dedicated by the applicant shall be
4 determined as of the date of the submission of the land
5 development or subdivision application to the municipality.

6 (g) [Impact] Transportation impact fees previously collected
7 by a municipality shall be refunded, together with earned
8 accrued interest thereon, to the payor of [such] the
9 transportation impact fees from the date of payment under any of
10 the following circumstances:

11 (1) In the event that a municipality terminates or
12 completes an adopted capital improvements plan for a
13 transportation service area and there remains at the time of
14 termination or completion undispersed funds in the accounts
15 established for that purpose, the municipality shall provide
16 written notice by certified mail to those persons who
17 previously paid the transportation impact fees which remain
18 undispersed of the availability of said funds for refund of
19 the person's proportionate share of the fund balance. The
20 allocation of the refund shall be determined by generally
21 accepted accounting practices. In the event that any of the
22 funds remain unclaimed following one year after the notice,
23 which notice shall be provided to the last known address
24 provided by the payor of the transportation impact fees to
25 the municipality, the municipality shall be authorized to
26 transfer any funds so remaining to any other fund in the
27 municipality without any further obligation to refund said
28 funds.

29 (2) If the municipality fails to commence construction
30 of any transportation service area road improvements within

1 three years of the scheduled construction date set forth in
2 the transportation capital improvements plan, any person who
3 paid any transportation impact fees pursuant to that
4 transportation capital improvements plan shall, upon written
5 request to the municipality, receive a refund of that portion
6 of the transportation impact fee attributable to the
7 contribution for the uncommenced road improvement, plus the
8 interest accumulated thereon from the date of payment.

9 (3) If, upon completion of any road improvements
10 project, the actual expenditures of the capital project are
11 less than 95% of the costs properly allocable to the
12 transportation impact fee paid within the transportation
13 service area in which the completed road improvement was
14 adopted, the municipality shall refund the pro rata
15 difference between the budgeted costs and the actual
16 expenditures, including interest accumulated thereon from the
17 date of payment, to the person or persons who paid the
18 transportation impact fees for such improvements.

19 (4) If the new development for which transportation
20 impact fees were paid is not commenced prior to the
21 expiration of building permits issued for the new development
22 within the time limits established by applicable building
23 codes within the municipality or if the building permit as
24 issued for the new development is altered and the alteration
25 results in a decrease in the amount of the transportation
26 impact fee due in accordance with the calculations set forth
27 in subsection (a)(1).

28 (h) Where [an] a transportation impact fee ordinance has
29 been adopted pursuant to the other provisions of this act, the
30 ordinance may impose an additional transportation impact fee

1 upon new developments which generate 1,000 or more new peak hour
2 trips, net of pass-by trips as defined by the current edition of
3 the Institute of Transportation Engineers Trip Generation
4 Manual, during the peak hour period designated in the ordinance.
5 In such case, the transportation impact fee ordinance adopted
6 under this act may require the applicant for such a development
7 to perform a traffic analysis of development traffic impact on
8 highways, roads or streets outside the transportation service
9 area in which the development site is located but within the
10 boundaries of the municipality or municipalities adopting a
11 joint municipal transportation impact fee ordinance or
12 municipalities which are participating in a joint municipal
13 authority authorized to impose transportation impact fees by
14 this article. Any such highways, roads or streets or parts
15 thereof outside the transportation service area which will
16 accommodate 10% or more of development traffic and 100 or more
17 new peak hour trips may be required to be studied, and the
18 ordinance may require the applicant to mitigate the traffic
19 impacts of the development on such highways, roads and streets
20 to maintain the predevelopment conditions after completion of
21 the development.

22 Section 4. Section 506-A of the act, added December 19, 1990
23 (P.L.1343, No.209), is amended to read:

24 Section 506-A. Appeals.--(a) Any person required to pay
25 [an] a transportation impact fee shall have the right to contest
26 the land use assumptions, the development and implementation of
27 the transportation capital improvement program, the imposition
28 of transportation impact fees, the periodic updating of the
29 transportation capital improvement program, the refund of
30 transportation impact fees and all other matters relating to

1 transportation impact fees, including the constitutionality or
2 validity of the transportation impact fee ordinance by filing an
3 appeal with the court of common pleas.

4 (b) A master may be appointed by the court to hear testimony
5 on the issues and return the record and a transcript of the
6 testimony, together with a report and recommendations, or the
7 court may appoint a master to hold a nonrecord hearing and to
8 make recommendations and return the same to the court, in which
9 case either party may demand a hearing de novo before the court.

10 (c) Any cost incurred by parties in such an appeal shall be
11 the separate responsibility of the parties.

12 Section 5. Section 508-A of the act, added June 22, 2000
13 (P.L.495, No.68), is amended to read:

14 Section 508-A. Joint Municipal Transportation Impact Fee
15 Ordinance.--(a) For the purpose of permitting municipalities
16 which cooperatively plan for their future to also provide for
17 transportation capital improvements in a cooperative manner, the
18 governing bodies of each municipality which has adopted a joint
19 municipal comprehensive plan pursuant to Article XI in
20 accordance with the conditions and procedures set forth in this
21 article may cooperate with one or more municipalities to enact,
22 amend and repeal joint transportation impact fee ordinances to
23 accomplish the purposes of this act in accordance with this
24 article.

25 (b) The procedures set forth in this article shall be
26 applicable to the enactment of a joint municipal transportation
27 impact fee ordinance.

28 (c) Each municipality party to a joint municipal
29 transportation impact fee ordinance shall approve the advisory
30 committee and shall adopt the land use assumptions, roadway

1 sufficiency analysis, capital improvement plan and ordinances
2 and amendments thereto in accordance with the procedures in this
3 article, and no such ordinance shall become effective until it
4 has been properly adopted by all the participating
5 municipalities.

6 Section 6. The act is amended by adding an article to read:

7 ARTICLE V-B

8 DEVELOPMENT IMPACT FEES

9 Section 501-B. Legislative findings and intent.

10 The General Assembly finds and declares as follows:

11 (1) It is the public policy of this Commonwealth to
12 protect the public health, safety and general welfare of its
13 citizens by providing an equitable program for the planning
14 and financing of public facilities to serve new growth and
15 development and to authorize school districts and
16 municipalities to assess, impose, levy and collect fees as
17 defined in this article as development impact fees for all
18 new development within their jurisdictional limits.

19 (2) By enacting this article, the General Assembly
20 intends to encourage and promote each of the following:

21 (i) Adequate public facilities to serve new growth
22 and development.

23 (ii) Orderly growth and development that does not
24 place an undue financial burden upon existing taxpayers.

25 (iii) Standards for apportioning the fair share of
26 the cost of new or upgraded public facilities that serve
27 new growth and development among those who will benefit
28 by permitting school districts and municipalities to:

29 (A) adopt development impact fee ordinances; and

30 (B) impose development impact fees.

1 Section 502-B. Definitions.

2 The following words and phrases when used in this article
3 shall have the meanings given to them in this section unless the
4 context clearly indicates otherwise:

5 "Capital improvement costs." Costs incurred to provide
6 public facilities and capital improvements to serve new
7 development, including costs for planning, design and
8 construction, land acquisition, improvement, design and
9 engineering related thereto, including, but not limited to, the
10 construction contract price, surveying and engineering fees,
11 related land acquisition costs, including land purchases, court
12 awards and costs, attorney fees and expert witness fees and
13 expenses incurred for qualified staff of any engineer, planner,
14 architect, landscape architect or financial consultant for
15 preparing or updating the capital improvement program and
16 administrative costs related thereto, provided that such
17 administrative costs shall not exceed 3% of the total amount of
18 the costs. Projected interest charges and other finance costs
19 may be included if the development impact fees are to be used
20 for the payment of principal and interest on bonds, notes or
21 other financial obligations issued by or on behalf of the
22 governmental entity to finance capital improvements. The term
23 may include up to one year's start-up costs related to the
24 operation of public facilities or capital improvements,
25 including the costs of hiring and training additional personnel,
26 acquiring additional insurance and providing additional
27 transportation. The term also includes routine and periodic
28 maintenance expenditures or other operating costs for public
29 facilities or capital improvements attributed to new
30 development.

1 "Capital improvement program." A plan adopted by a
2 governmental entity setting out the need for public facilities
3 or capital improvements, the costs of the improvements and
4 proposed funding sources and which plan covers at least a five-
5 year period and is reviewed at least every five years.

6 "Capital improvements." Improvements and equipment that
7 increase or improve the service capacity of a public facility
8 and have a useful life to ten years or more.

9 "Development impact fee." A charge imposed upon new
10 development by a governmental entity to fund all or a portion of
11 the public facility's capital improvement costs affected by the
12 new development from which it is collected.

13 "Governmental entity." A municipality or a school district.

14 "Municipal facilities."

15 (1) Police, emergency medical, rescue and fire
16 protection facilities and equipment.

17 (2) Park and recreational facilities and equipment. The
18 authority to impose development impact fees for park and
19 recreation purposes in accordance with this article shall be
20 in addition to and shall not restrict the power of a
21 municipality to require the construction of recreational
22 facilities or the dedication of land, or fees in lieu
23 thereof, in accordance with section 503(11).

24 "Municipality." A municipality, excluding a county, as those
25 terms are defined in section 107.

26 "New development." A commercial, industrial or residential
27 or other project that involves new construction, enlargement,
28 reconstruction, redevelopment, relocation or structural
29 alteration that is reasonably expected to generate additional
30 need for public facility capital improvements.

1 "Ordinance." A legislative act of a municipality and a
2 resolution of a school district adopted under this article and
3 enacted pursuant to the procedures provided in section 608.

4 "Proportionate share." That portion of capital improvement
5 costs that reasonably relates to the service demands and needs
6 of new development.

7 "Public facilities." School facilities and municipal
8 facilities.

9 "School district." A school district of any class, except a
10 school district of the first class or a school district of the
11 first class A.

12 "School facilities." Public schools and equipment.

13 Section 503-B. Grant of power.

14 The governing body of a governmental entity, in accordance
15 with the conditions and procedures set forth in this article,
16 may enact, amend and repeal an ordinance authorizing the
17 assessment and collection of development impact fees.

18 Section 504-B. Calculation of development impact fees.

19 (a) Needs assessment.--The governmental entity considering
20 the adoption of development impact fees shall conduct a needs
21 assessment for the type of public facilities or capital
22 improvements for which development impact fees are to be levied.
23 The needs assessment shall identify levels of service standards
24 and projected public facilities or capital improvements needs
25 and distinguish existing needs and deficiencies from future
26 needs. The findings of this document shall be adopted by
27 ordinance of the governmental entity.

28 (b) Public availability.--The data sources and methodology
29 upon which needs assessments and development impact fees are
30 based shall be made available to the public upon request.

1 (c) Accounting principles.--The amount of each development
2 impact fee imposed shall be based upon the actual cost of public
3 facility expansion or capital improvements or reasonable
4 estimates of the cost to be incurred by the governmental entity
5 as a result of new development. The calculation of each
6 development impact fee shall be in accordance with generally
7 accepted accounting principles.

8 (d) Requirements.--A development impact fee shall meet the
9 following requirements:

10 (1) The amount of the development impact fee shall be
11 reasonably related or reasonably attributable to the new
12 development's share of the cost of public facilities and
13 capital improvements made necessary by the new development.

14 (2) The development impact fee imposed shall not exceed
15 a proportionate share of the costs incurred or to be incurred
16 by the governmental entity in accommodating the development.
17 The following factors shall be considered in determining a
18 proportionate share of public facilities and capital
19 improvement costs:

20 (i) The need for public facilities and capital
21 improvements required to serve new development, based on
22 a capital improvements program that shows deficiencies in
23 public facilities serving existing development, and the
24 means, other than development impact fees, by which any
25 existing deficiencies will be eliminated within a
26 reasonable period of time and that shows additional
27 demands anticipated to be placed on specified public
28 facilities and capital improvements by new development.

29 (ii) The extent to which new development is required
30 to contribute to the cost of system improvements in the

1 future.

2 Section 505-B. Collection and expenditure of development impact
3 fees.

4 (a) Related to benefits.--The collection and expenditure of
5 development impact fees shall be reasonably related to the
6 benefits accruing to the development against which the
7 development impact fees are assessed. The ordinance shall impose
8 the following requirements:

9 (1) Upon collection, development impact fees shall be
10 deposited in a special proprietary trust fund and invested
11 with all interest accruing to that fund.

12 (2) Within eight years of the date of collection,
13 development impact fees shall be expended or encumbered for
14 the construction of public facilities or capital improvements
15 that are of reasonable benefit to the development for which
16 the fees were paid and that are consistent with the capital
17 improvement program.

18 (3) Where the expenditure or encumbrance of development
19 impact fees is not feasible within eight years, the
20 governmental entity may retain development impact fees for a
21 longer period of time if there are compelling reasons for the
22 longer period. In no case shall development impact fees be
23 retained longer than 12 years.

24 (b) Restrictions.--The following restrictions shall apply to
25 the assessment and collection of development impact fees:

26 (1) Development impact fees shall be assessed upon the
27 issuance of a building permit or other appropriate permission
28 to proceed with development.

29 (2) Except as provided in paragraph (3), development
30 impact fees shall be collected in full upon the issuance of

1 certificate of occupancy or other final action authorizing
2 the intended use of a structure.

3 (3) If a development impact fee is assessed against a
4 residential development in which one or more dwellings are to
5 be conveyed to a purchaser or purchasers other than the
6 developer, the governmental entity shall assess a portion of
7 the development impact fee on a pro rata basis upon each
8 dwelling to be conveyed to a purchaser other than the
9 developer, and the prorated amount shall be collected from
10 the purchaser of the dwelling at the time of closing or
11 settlement.

12 (4) Assessed development impact fees shall constitute a
13 lien in accordance with this paragraph:

14 (i) Except as provided in subparagraph (ii), an
15 assessed development impact fee shall constitute a lien
16 on the new development against which it is imposed, and
17 the lien shall continue until the development impact fee
18 is paid in full.

19 (ii) If a development impact fee is to be collected
20 on a pro rata basis in accordance with paragraph (3),
21 only the prorated amount of the development impact fee to
22 be paid by the purchaser of a dwelling shall constitute a
23 lien on that dwelling, and the lien shall continue until
24 the prorated amount is paid in full.

25 (c) Recoupment of costs.--A governmental entity may recoup
26 costs of excess capacity in public facilities or capital
27 improvements constructed after the effective date of this
28 article, where the excess capacity has been provided in
29 anticipation of the needs of new development, by requiring
30 development impact fees for that portion of the facilities

1 constructed for future users. The need to recoup costs for
2 excess capacity must have been documented by a preconstruction
3 assessment that demonstrated the need for the excess capacity.
4 The fees imposed to recoup the costs to provide the excess
5 capacity shall be based on the governmental entity's actual cost
6 of acquiring, constructing or upgrading the facility and shall
7 be no more than a proportionate share of the costs to provide
8 the excess capacity. That portion of a development impact fee
9 deemed recoupment is exempt from the provisions of section 504-
10 B(d) (2).

11 (d) In lieu of payments.--Governmental entities may accept
12 the dedication of land or the construction of public facilities
13 or capital improvements in lieu of payment of development impact
14 fees provided that:

15 (1) The need for the dedication or construction is
16 clearly documented in the governmental entity's capital
17 improvement program or comprehensive plan.

18 (2) The land proposed for dedication for the public
19 facilities to be constructed is determined to be appropriate
20 for the proposed use by the governmental entity.

21 (3) Formulas or procedures for determining the worth of
22 proposed dedications or constructions are established.

23 (e) Exemptions.--The following exemptions shall apply:

24 (1) Development impact fees shall not be imposed for
25 remodeling, rehabilitation or similar improvements to an
26 existing structure or rebuilding a damaged structure unless
27 there is an increase in the number of dwelling units or any
28 other measurable unit for which a development impact fee is
29 collected. Development impact fees may be imposed when
30 property which is owned or controlled by Federal or State

1 government is converted to private ownership or control.

2 (2) Nothing in this article shall prevent a governmental
3 entity from granting any exemptions which it deems
4 appropriate, including reducing or eliminating development
5 impact fees on affordable housing units for low-income or
6 moderate-income individuals.

7 Section 506-B. Refund of development impact fees.

8 (a) Amount of refund.--If development impact fees are not
9 expended or encumbered within the period established in section
10 504-B, the governmental entity shall refund to the current
11 property owner the amount of the development impact fee paid and
12 accrued interest. The governmental entity shall send the refund
13 to the current property owner by any form of mail requiring a
14 receipt signed by the current property owner or an authorized
15 agent within one year of the date on which the right to claim a
16 refund arises. If the refund is returned unclaimed, the
17 governmental entity shall publish notice of the refund once a
18 week for two consecutive weeks in a newspaper of general
19 circulation in the county in which the governmental entity is
20 located. All refunds due and not claimed within one year after
21 notification as provided in this section shall be retained by
22 the municipality and may be transferred to the municipality's
23 general fund and used for any public purpose.

24 (b) Refund upon termination.--

25 (1) A governmental entity that terminates the collection
26 of development impact fees for any or all categories of
27 public facilities shall refund all unexpended or unencumbered
28 funds collected in accordance with the notice provisions of
29 subsection (a) and, in addition, shall place a notice of the
30 termination and availability of refunds in a newspaper of

1 general circulation in the county of the governmental entity
2 once a week for at least two consecutive weeks.

3 (2) This subsection shall not apply if there are no
4 unexpended or unencumbered balances within a fund or funds
5 being terminated.

6 Section 507-B. Severability.

7 If any portion of this article or any rule, regulation or
8 determination made under this article, or the application of
9 this article to any person, agency or circumstance is held
10 invalid by a court of competent jurisdiction, the remainder of
11 this article, rule, regulation or determination and the
12 application of those provisions to other persons, agencies or
13 circumstances shall not be affected. The invalidity of any
14 section or sections, or parts of any section or sections of this
15 article, shall not affect the validity of the remainder of this
16 article.

17 Section 508-B. Limitation on development impact fees.

18 No municipality may include any transportation-related
19 improvement or expenditure already included under Article V-A in
20 any development impact fee adopted under this article.

21 Section 7. This act shall take effect in 60 days.