

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1061 Session of
2003

INTRODUCED BY PETRI, BARRAR, McILHINNEY, O'NEILL, WATSON AND
CLYMER, APRIL 2, 2003

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, APRIL 2, 2003

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," adding provisions relating to impact fees.

21 The General Assembly of the Commonwealth of Pennsylvania

22 hereby enacts as follows:

23 Section 1. The act of July 31, 1968 (P.L.805, No.247), known
24 as the Pennsylvania Municipalities Planning Code, reenacted and
25 amended December 21, 1988 (P.L.1329, No.170), is amended by

26 adding a section to read:

1 Section 501.1-A. Prohibition of New Transportation Impact
2 Fees.--Any municipality which has adopted on or before the
3 effective date of Article V-B an ordinance authorizing the
4 imposition of impact fees for funding transportation capital
5 improvements in accordance with this article may continue to
6 assess and collect the impact fees pursuant to this article. Any
7 municipality which, as of the effective date of Article V-B, has
8 not adopted an impact fee ordinance in accordance with this
9 article, is prohibited from adopting an ordinance authorizing
10 the imposition of impact fees for funding transportation capital
11 improvements in accordance with Article V-A.

12 Section 2. The act is amended by adding an article to read:

13 ARTICLE V-B

14 DEVELOPMENT IMPACT FEES

15 Section 501-B. Legislative findings and intent.

16 The General Assembly finds and declares as follows:

17 (1) It is the public policy of this Commonwealth to
18 protect the public health, safety and general welfare of its
19 citizens by providing an equitable program for the planning
20 and financing of public facilities to serve new growth and
21 development and to authorize school districts and
22 municipalities to assess, impose, levy and collect fees as
23 defined herein as impact fees for all new development within
24 their jurisdictional limits.

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

27 (i) Adequate public facilities to serve new growth
28 and development.

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

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

5 (A) adopt development impact fee ordinances; and

6 (B) impose development impact fees.

7 Section 502-B. Definitions.

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

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

1 additional insurance and providing additional transportation.
2 Capital improvement costs do not include routine and periodic
3 maintenance expenditures or other operating costs.

4 "Capital improvement program." That plan to be adopted by a
5 governmental entity setting out the need for public facility
6 capital improvements, the costs of the improvements and proposed
7 funding sources. A capital improvement program must cover at
8 least a five-year period and shall be reviewed at least every
9 five years.

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

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

14 "Impact fee." The charge imposed upon new development by a
15 governmental entity to fund all or a portion of the public
16 facility's capital improvement costs affected by the new
17 development from which it is collected.

18 "Municipal facilities."

19 (1) Police, emergency medical, rescue and fire
20 protection facilities and equipment.

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

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

30 "New development." Any commercial, industrial or residential

1 or other project that involves new construction, enlargement,
2 reconstruction, redevelopment, relocation or structural
3 alteration which is reasonably expected to generate additional
4 need for public facility capital improvements.

5 "Ordinance." Not only a legislative act of a municipality,
6 but also a resolution of a school district. An ordinance adopted
7 under this article shall be enacted pursuant to the procedures
8 provided in section 608.

9 "Proportionate share." That portion of the capital
10 improvement costs that reasonably relates to the service demands
11 and needs of the new development.

12 "Public facilities."

13 (1) With regard to school districts and school
14 facilities.

15 (2) With regard to municipalities and municipal
16 facilities.

17 "School district." A school district of any class, except a
18 school district of the first class or a school district of the
19 first class A.

20 "School facilities." Public schools and equipment.

21 Section 503-B. Grant of power.

22 The governing body of a governmental entity, in accordance
23 with the conditions and procedures set forth in this article,
24 may enact, amend and repeal an ordinance authorizing the
25 assessment and collection of impact fees.

26 Section 504-B. Calculation of impact fees.

27 (a) Needs assessment.--The governmental entity considering
28 the adoption of impact fees shall conduct a needs assessment for
29 the type of public facility or public facilities for which
30 impact fees are to be levied. The needs assessment shall

1 identify levels of service standards and projected public
2 facilities capital improvements needs and distinguish existing
3 needs and deficiencies from future needs. The findings of this
4 document shall be adopted by ordinance of the governmental
5 entity.

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

9 (c) Accounting principles.--The amount of each impact fee
10 imposed shall be based upon the actual cost of public facility
11 expansion or improvements, or reasonable estimates of the cost,
12 to be incurred by the governmental entity as a result of new
13 development. The calculation of each impact fee shall be in
14 accordance with generally accepted accounting principles.

15 (d) Requirements.--An impact fee shall meet the following
16 requirements:

17 (1) The amount of the fee must be reasonably related to
18 or reasonably attributable to the new development's share of
19 the cost of capital improvements made necessary by the new
20 development.

21 (2) The impact fees imposed must not exceed a
22 proportionate share of the costs incurred or to be incurred
23 by the governmental entity in accommodating the development.
24 The following factors shall be considered in determining a
25 proportionate share of public facilities capital improvement
26 costs:

27 (i) The need for public facilities capital
28 improvements required to serve new development, based on
29 a capital improvements program that shows deficiencies in
30 capital facilities serving existing development, and the

1 means, other than impact fees, by which any existing
2 deficiencies will be eliminated within a reasonable
3 period of time and that shows additional demands
4 anticipated to be placed on specified capital facilities
5 by new development.

6 (ii) The extent to which new development is required
7 to contribute to the cost of system improvements in the
8 future.

9 Section 505-B. Collection and expenditure of impact fees.

10 (a) Related to benefits.--The collection and expenditure of
11 impact fees must be reasonably related to the benefits accruing
12 to the development against which the fees are assessed. The
13 ordinance shall impose the following requirements:

14 (1) Upon collection, impact fees must be deposited in a
15 special proprietary fund, which shall be invested with all
16 interest accruing to the trust fund.

17 (2) Within eight years of the date of collection, impact
18 fees shall be expended or encumbered for the construction of
19 public facilities capital improvements of reasonable benefit
20 to the development paying the fees and that are consistent
21 with the capital improvement program.

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

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

29 (1) Impact fees imposed pursuant to the authority
30 granted in this article shall be assessed upon the issuance

1 of a building permit or other appropriate permission to
2 proceed with development.

3 (2) Except as provided in paragraph (3), impact fees
4 imposed pursuant to the authority granted in this article
5 shall be collected in full upon the issuance of certificate
6 of occupancy or other final action authorizing the intended
7 use of a structure.

8 (3) If, pursuant to the authority granted in this
9 article, an impact fee is assessed against a residential
10 development in which one or more dwellings are to be conveyed
11 to a purchaser or purchasers other than the developer, the
12 governmental entity shall assess a portion of the impact fee
13 on a pro rata basis upon each dwelling to be conveyed to a
14 purchaser other than the developer and the prorated amount
15 shall be collected from the purchaser of the dwelling at the
16 time of closing or settlement.

17 (4) Assessed impact fees shall constitute a lien in
18 accordance with this paragraph:

19 (i) Except as provided in subparagraph (ii), an
20 assessed impact fee shall constitute a lien on the new
21 development against which it is imposed, and the lien
22 shall continue until the impact fee is paid in full.

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

29 (c) Recoupment of costs.--A governmental entity may recoup
30 costs of excess capacity in capital facilities constructed after

1 the effective date of this article, where the excess capacity
2 has been provided in anticipation of the needs of new
3 development, by requiring impact fees for that portion of the
4 facilities constructed for future users. The need to recoup
5 costs for excess capacity must have been documented by a
6 preconstruction assessment that demonstrated the need for the
7 excess capacity. The fees imposed to recoup the costs to provide
8 the excess capacity must be based on the governmental entity's
9 actual cost of acquiring, constructing or upgrading the facility
10 and must be no more than a proportionate share of the costs to
11 provide the excess capacity. That portion of an impact fee
12 deemed recoupment is exempt from provisions of section 504-
13 B(a)(2).

14 (d) In lieu of payments.--Governmental entities may accept
15 the dedication of land or the construction of public facilities
16 in lieu of payment of impact fees provided that:

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

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

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

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

26 (1) Impact fees shall not be imposed for remodeling,
27 rehabilitation or similar improvements to an existing
28 structure, or rebuilding a damaged structure, unless there is
29 an increase in the number of dwelling units or any other
30 measurable unit for which an impact fee is collected. Impact

1 fees may be imposed when property which is owned or
2 controlled by Federal Government or State government is
3 converted to private ownership or control.

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

9 Section 506-B. Refund of impact fees.

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

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

1 newspaper of general circulation in the county of the
2 governmental entity once a week for at least two consecutive
3 weeks. A governmental entity is released from the notice
4 requirements of this subsection if there are no unexpended or
5 unencumbered balances within a fund or funds 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 3. This act shall take effect in 60 days.