

APPENDIX B: ARKANSAS IMPACT FEE ENABLING ACT

ARKANSAS CODE, TITLE 14, CHAPTER 56, SUBCHAPTER 1

14-56-102. Development impact fees.

(a) As used in this section:

- (1) "Capital plan" means a description of new public facilities or of new capital improvements to existing public facilities or of previous capital improvements to public facilities that continue to provide capacity available for new development that includes cost estimates, and capacity available to serve new development;
- (2) "Development" means any residential, multi-family, commercial, or industrial improvement to lands within the municipality or within the municipal service agency's area of service;
- (3) "Development impact fee" means:
 - (A) A fee or charge imposed by the municipality or by a municipal service agency upon or against a development in order to generate revenue for funding or for recouping expenditures of the municipality or municipal service agency that are reasonably attributable to the use and occupancy of the development; and
 - (B) Shall not include any ad valorem real property taxes, any special assessments for an improvement district, any utility hookup fees or access fees, or any fees for filing development plats or plans, for building permits or for construction permits assessed by a municipality or a municipal service that are approximately equal to the cost of the plat, plan, or permit review process to the municipality or the municipal service agency;
- (4) "Municipality" means a city of the first class, city of the second class, or an incorporated town;
- (5) "Municipal service agency" means:
 - (A) Any department, commission, utility or agency of a municipality, including any municipally-owned or controlled corporation;
 - (B) Any municipal improvement district, consolidated public or municipal utility system improvement district, or municipally-owned nonprofit corporation that owns or operates any utility service;
 - (C) Any municipal water department, waterworks or joint waterworks, or a consolidated waterworks system operating under the Consolidated Waterworks Authorization Act;
 - (D) Any municipal wastewater utility or department;

(E) Any municipal public facilities board; or

(F) Any of these municipal entities operating with another similar entity under a interlocal agreement in accordance with §§ 25-20-101 through 25-20-108 or §§ 25-20-201 through 25-20-207;

(6) "Ordinance" means an municipal impact fee ordinance of municipality or an authorizing rate resolution by a board of commissioners of a consolidated waterworks system authorized to set rates for its customers under the Consolidated Waterworks Authorization Act;

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

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

(B) Wastewater treatment and sanitary sewerage;

(C) Stormwater drainage;

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

(E) Library;

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

(G) Police or public safety;

(H) Fire protection; and

(I) Ambulance or emergency medical transportation and response.

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

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

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

- (3) No development impact fee shall be assessed for, or expended upon, the operation or maintenance of any public facility, or for the construction or improvement of public facilities, that does not create additional capacity.
- (d) (1) A municipality or a municipal service agency may assess and collect impact fees only from new development and only against a particular new development in reasonable proportion to the demand for additional capacity in public facilities that are reasonably attributable to the use and occupancy of that new development.
- (2) The owner, resident, or tenant of a property that was assessed an impact fee and paid it in full shall have the right to make reasonable use of all public facilities that were financed by the impact fee.
- (e) (1) A municipality or municipal service agency may assess, collect, and expend impact fees only under a development impact fee ordinance adopted and amended under this section.
- (2) A development impact fee ordinance shall be adopted or amended by the governing body of a municipality or municipal service agency only after the municipality or a municipal service agency has adopted a capital plan and level of service standards for all of the public facilities that are to be so financed.
- (3) The development impact fee ordinance shall contain:
- (A) A statement of the new public facilities and capital improvements to existing public facilities that are to be financed by impact fees and the level of service standards included in the capital plan for the public facilities that are to be financed with impact fees;
- (B) The actual formula or formulas for assessing the impact fee, which shall be consistent with the level of service standards;
- (C) The procedure by which impact fees are to be assessed and collected; and
- (D) The procedure for refund of excess impact fees, in accordance with subsection (h) of this section.
- (f) (1) The municipality or municipal service agency shall collect the development impact fee at the time and manner and from the party as prescribed in the ordinance and shall collect the fee separate and apart from any other charges to the development.
- (2) (A) A development impact fee shall be collected at either the closing on the property by the owner or the issuance of a certificate of occupancy by the municipality.”
- (B) However, a municipal water or wastewater department, waterworks, or joint waterworks, or a consolidated waterworks system operating under the Consolidated Waterworks

Authorization Act may collect a development impact fee in connection with and as a condition to the installation of the water meter serving the property.

- (3) At closing, the development impact fee that has been paid or will be paid for the property shall be separately enumerated on the closing statement.
- (4) The ordinance may include that the development impact fee may be paid in installments at a reasonable interest rate for a fixed number of years or that the municipality or municipal service agency may negotiate agreements with the owner of the property as to the time and method of paying the impact fee.
- (g) (1) The funds collected under a development impact fee ordinance shall be deposited into a special interest-bearing account.
 - (2) The interest earned on the moneys in the separate account shall be credited to the special fund and the funds deposited into the special account and the interest earned shall be expended only in accordance with this section.
 - (3) No other revenues or funds shall be deposited into the special account.
- (h) (1) The municipality or municipal service agency shall refund the portion of collected development impact fees, including the accrued interest, that has not been expended seven (7) years from the date the fees were paid.
 - (2) (A) A refund shall be paid to the present owner of the of the property that was the subject of new development and against which the fee was assessed and collected.
 - (B) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the present owners of the property not later than thirty (30) days after the date which the refund becomes due.
 - (C) The sending by regular mail of the notices to all present owners of record shall be sufficient to satisfy the requirement of notice.
 - (3) (A) The refund shall be made on a pro rata basis, and shall be paid in full not later than ninety (90) days after the date certain upon which the refund becomes due.
 - (B) If the municipality or municipal service agency does not pay a refund in full within the period set in this subsection to any person entitled to a refund, that person shall have a cause of action against the municipality for the refund or the unpaid portion in the circuit court for the county in which the property is located.
- (i) (1) (A) On and after the effective date of this section, a municipality or municipal service agency shall levy and collect a development impact fee only if levied and collected under ordinances enacted in compliance with this section.

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

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

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