



**H.B. 299**

126th General Assembly  
(As Introduced)

Reps. Peterson, Schneider, Wolpert, Schaffer, Calvert, G. Smith, Allen,  
Flowers

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**BILL SUMMARY**

- Authorizes counties, townships, and school districts to levy impact fees on new development to finance public real property improvements and some public tangible personal property necessitated by that new development.

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**CONTENT AND OPERATION**

**Background**

Impact fees--charges to offset a proportionate share of public costs of accommodating new development to be paid when a building permit is issued--have been charged by *municipal corporations* under their Ohio Constitutional *home rule* powers and have been found to be constitutional when a reasonable relationship is shown (1) between a public capital expenditure and a new development and (2) between the impact fee charged and the benefits to the new

development from the public capital expenditure.<sup>1</sup> There is no general statutory authority for any Ohio political subdivision to charge impact fees. The bill provides some authority for counties, townships, and school districts to charge impact fees for public improvements and certain public tangible personal property.

### **Impact fees in counties, townships, and school districts**

#### **In general**

Under the bill, a board of county commissioners, a board of township trustees, or a board of education of a city, local, or exempted village school district may adopt one or more resolutions imposing an impact fee upon development occurring within a development area for the purpose of financing all or a part of the cost of *project improvements* (see definition below) for that area and all or a part of the proportionate cost of *system improvements* (see the definition below) to be financed by the fee. "Development" means an improvement of land for residential, commercial, or industrial purposes, but not for agricultural purposes. A *development area* is an area designated by any of these governing boards that is bounded by a single line and located within the unincorporated territory of the county, the unincorporated territory of the township, or the school district, as applicable.<sup>2</sup> More than one development area may be included in a single resolution, but a separate impact fee must be imposed for each development area in the resolution. (R.C. 5755.01(D), (E), and (F) and 5755.03(A) and (B).)

An impact fee resolution must include all of the following (R.C. 5755.01(B), (H), and (I) and 5755.03(A) and (C)):

- (1) A description of the boundaries of the development area;
- (2) The total amount of the fee, or a schedule or formula from which the fee amount can be derived;
- (3) A description of the project improvements or system improvements to be financed with the fee proceeds. "Project improvements" are capital facilities that generally serve (or will serve when completed) only improvements to real property in a development area or the residents, occupants, or other users of those improvements; but, a capital facility that incidentally serves or otherwise benefits improvements outside the development area, or that incidentally serves or benefits

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<sup>1</sup> For example, see *Home Builders Assn. of Dayton & the Miami Valley v. Beavercreek (2000)*, 89 Ohio St.3d 121 and progeny.

<sup>2</sup> The boundary of the development area may be changed by adoption of a subsequent resolution that describes the new boundaries. (R.C. 5755.03(F).)

persons other than residents, occupants, or other users of improvements in the development area, is not disqualified as a project improvement because of those incidental benefits. "System improvements" are capital facilities that serve (or will serve when completed) improvements to real property in a development area or the residents, occupants, or other users of those improvements, *and* improvements to real property outside the development area or the residents, occupants, or other users of those improvements. "Capital facilities" are buildings, structures, and other improvements to real property, and tangible personal property having an estimated life or usefulness of ten years or more and serving a lawful purpose of the political subdivision.

(4) If project improvements are to be financed with fee proceeds, the percentage of the costs of those improvements to be financed with those proceeds;

(5) If system improvements are to be financed with fee proceeds, the proportionate share of the total costs of those improvements to be financed with those proceeds. This proportionate share (a) cannot exceed the proportionate share of the system improvement that serves the development area in which the fee is imposed as indicated by applicable engineering and planning studies regarding the capacity and usage patterns of improvements of that type and (b) cannot include the cost of remedying existing deficiencies in system improvements.

(6) The date on which imposition of the fee becomes effective (it must be on or after the resolution's effective date) and the date, if any, after which the fee can no longer be charged;

(7) When the fee is payable and to whom it is payable.

It is possible for more than one governing board to adopt an impact fee resolution affecting the same (or portions of the same) area. And, impact fees must apply to every development in a development area for which a building permit is issued for the time period the fee is imposed, unless the governing board determines that the development does not contribute to demand for the capital facility financed with the fee. (R.C. 5755.03(B) and (E).)

An impact fee resolution takes effect on the date specified in it unless the resolution requires electors of the unincorporated territory of the county or township, or of the school district, as applicable, to first approve it. The bill provides specific notice and ballot certification requirements for such an election. If a majority of the electors voting on the question approves the fee, planning, zoning, and certain building authorities will receive from the applicable governing board certified copies of the resolution, as will the county treasurer if the treasurer is to collect the fee. (R.C. 5755.03(G) and 5755.04.)

**Planning required for adoption of the impact fee resolutions**

**Land use plans.** The bill permits a board of county commissioners or a board of township trustees to adopt a resolution imposing an impact fee *only* if the board has adopted a land use plan for the development area that is in effect throughout that area when the impact fee resolution is adopted. That land use plan can be a comprehensive zoning plan adopted under the County Zoning Law or the Township Zoning Law or a plan adopted under the terms in the bill, which plan can be in lieu of or in addition to such a comprehensive zoning plan. A plan not created under those zoning laws must include "land use assumptions"--i.e., projections of changes in land uses, densities, intensities, or population in the development area for a period of ten years. No land use plan needs to be in effect for a board of education to impose an impact fee. (R.C. 5755.01(G) and (J) and 5755.02(A).)

**Capital facilities plans.** Before adopting an impact fee resolution, a governing board must adopt a capital facilities plan (CFP) for each development area designated in the resolution. If adopted by a county or township, this CFP must be consistent with the land use plan that applies to the development area. A CFP must have the following (R.C. 5755.02(B)):

- An analysis of (1) the current "capacity" of existing capital facilities under the jurisdiction of the applicable governing board, (2) the current "level of use" of those facilities, (3) existing known "commitments for use" of current capacity, and (4) any surplus or deficiency in current capacity relative to current and existing known committed use.<sup>3</sup> This analysis must include among existing capital facilities (a) all the capital facilities of the county, township, or school district of the same kind as the governing board anticipates will be financed with an impact fee imposed in the development area and (b) any capital facilities that have been contracted for or let out to bid, or for which financing has been obtained through the passage of a bond or tax issue or from state, federal, or other sources.
  
- Estimates of the costs to upgrade, improve, expand, or replace existing capital facilities included in the analysis solely to meet current capacity and any deficiencies in current capacity, including the cost of upgrading

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<sup>3</sup> *Capacity is to be measured in standardized units appropriate to the kind of capital facility included in the analysis based on accepted engineering or planning principles.*

or replacing all or parts of capital facilities to meet more stringent safety, environmental, or regulatory standards.<sup>4</sup>

- A description of additional or expanded capital facilities necessitated by development in the development area, and an estimate of the cost of those additions or expansions. This description must classify each addition or expansion as either a project improvement or system improvement.

If a governing board intends to impose an impact fee to finance only a particular class of capital facilities, the capital facilities plan may be limited to only that class of facility. But, a governing board may not adopt a resolution imposing an impact fee to finance a capital facility for which a capital facilities plan has not been adopted. (R.C. 5755.02(C).)

**Impact fee amount, lien, payment, and credits**

**Fee amount.** Under the bill, an impact fee cannot exceed the cost of the project improvements and the proportionate share of the costs of the system improvements designated in the resolution, after deduction of any of the costs paid or payable from sources other than the fee and any credits (see below). In determining the proportionate share of the cost of a *system improvement*, the governing board may compute a time-price differential to account for the duration during which the development subject to the impact fee places demand on the system improvement in relation to the time the improvement is first placed into service and the estimated remaining useful life of the improvement. (R.C. 5755.03(D).)

If the resolution imposing an impact fee provides for its derivation from a schedule or formula, rather than providing for its amount, the governing board, *when a plat is required by law*, must determine and assess the fee amount (1) after the plat representing the territory in the development area is approved by the appropriate authority and (2) before any building permit is issued with respect to a parcel or tract of land represented in the plat. If a plat is *not required by law*, the amount of the impact fee must be determined and assessed (1) after the proposed

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<sup>4</sup> *Costs of a capital facility means (1) the costs of construction or expansion of the facility, including reasonable design, survey, engineering, environmental, and other professional fees directly related to the construction or expansion, and (2) costs of acquiring land or improvements on the land, including costs incurred for purchasing interests in land or improvements, court awards or settlements, reasonable appraisals, relocation service, negotiation service, title insurance, and expert witness, attorney, and other professional fees directly related to the acquisition (R.C. 5755.01(C)).*

subdivision in a development area is finally approved by the appropriate authority and (2) before a building permit is issued with respect to a parcel or tract of land. The fee amount must be derived from the schedule or formula in the resolution. (R.C. 5755.01(A) and 5755.05.)

If more than one plat or subdivision is approved for land within the same development area, the governing board must divide the amount of an impact fee determined and assessed for each plat or subdivision equitably among the lands within each plat or subdivision in proportion to the relative demand that the development places in each subdivision on the project improvement or system improvement to be financed with the fee. This division must be made on the basis of standardized units measuring demand for capital facilities of the type to be financed with the fee. (R.C. 5755.05.)

**Lien on property.** From the day an impact fee is determined and assessed, the lien of the county, township, or school district imposing it generally attaches to every tract, lot, or parcel within the development area in which the fee is imposed and continues until the fee is paid in full.<sup>5</sup> The lien extends to every tract, lot, or parcel within the development area in proportion to its current taxable value as compared to the current total taxable value of all tracts, lots, and parcels in the development area as shown on the current tax list of real and public utility property.

If a tract, lot, or parcel is exempted from taxation under the Taxable Property--Exemptions Law, the lien *does not attach* to that tract, lot, or parcel for the duration of the exemption, and the taxable value of that tract, lot, or parcel must be disregarded for the purposes of apportioning the lien.

The lien imposed by the bill can be enforced by a civil action in the court of common pleas in the same way mortgage liens are enforced in the name of the county, township, or school district imposing the impact fee. (R.C. 5755.12.)

**Fee payment.** An impact fee is payable in a form acceptable to the governing board and the person designated to collect it (R.C. 5755.05 and 5755.06(A)). Those persons are as follows (R.C. 5755.06(C)):

(1) If the fee is imposed by a board of county commissioners, the county treasurer;

(2) If the fee is imposed by a board of township trustees, the clerk of the township (changed by a recent act to the "township fiscal officer") or the county

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<sup>5</sup> The bill reference to a "municipal corporation" instead of to a "school district" in this context appears to be an error (R.C. 5755.12).

treasurer, as provided in the resolution imposing the fee or a subsequent resolution of the board certified to the county treasurer;

(3) If the fee is imposed by a board of education, the treasurer of the school district or the county treasurer, as provided in the resolution imposing the fee or a subsequent resolution of the board certified to the county treasurer.

Upon collection of an impact fee, the county treasurer, township fiscal officer, or school district treasurer, as applicable, must record the collection in a record kept for that purpose and cause the full amount of the remittance to be credited to a *special fund* (see discussion below). The person who paid the fee must receive from its collector a receipt acknowledging its payment. This receipt then can be used to obtain a building permit from the appropriate authority in the area requiring the impact fee. (R.C. 5755.06(D), (E), and (F).)

Once the amount of an impact fee is assessed and paid, the governing board must *certify* its amount *to the building department* or other authority responsible for issuing building permits in the development area if it is not under the governing board's jurisdiction. This certification must include information necessary to allow the building department or other authority to identify the area in which the fee is payable. (R.C. 5755.05.)

In any case, if the resolution imposing an impact fee requires all or a part of the fee to be paid before a building permit is issued, the building department or other authority issuing those permits cannot issue one for any parcel in the development area unless it has been presented a receipt of that payment. (R.C. 5755.06(F).)

**Penalties, interest, and credits.** A governing board may impose uniform penalties for the late payment of impact fees. A penalty cannot exceed 10% of the amount of the fee that was due and unpaid, and must be reduced by one-half if the full amount due is paid within ten days after the due date. A governing board also may impose interest on fees due and unpaid at a rate not exceeding the federal short-term rate. The penalties and interest may be imposed only by the resolution imposing an impact fee or by a subsequent resolution adopted by a majority of the governing board. (R.C. 5755.06(G).)

A governing board *must grant* a credit against the part of an impact fee payable by a person in the amount of the value of any contribution by that person to a project improvement. A governing board also *may grant* a credit against the part of an impact fee payable by a person in the amount of the value of any contribution by that person "to an improvement in the development area that would be a project improvement if it had been designated as such in the resolution imposing the fee." "Contributions," for these purposes, include, but are not limited

to, monetary contributions and dedications of land or improvements to land. (R.C. 5755.07.)

### **Appeals**

**Board of appeal.** Each governing board imposing an impact fee generally constitutes a board of appeal for the purposes of hearing appeals regarding the imposition of the fee (R.C. 5755.11(A)).

If the governing board is a board of county commissioners that has established a county planning commission, the board instead may designate that planning commission as the board of appeal. However, if a county planning commission was established upon petition by municipal corporations, the board may designate the commission as the board of appeal only with the consent of those municipal corporations. (R.C. 5755.11(A).)

If the governing board participates in a regional planning commission, the governing board, with the consent of the commission, instead may designate the commission or a committee of it as the board of appeals (R.C. 5755.11(A)).

**Process of appeal.** Any person required to pay an impact fee can appeal the lawfulness of the imposition of the fee, the determination of its amount, the amount of the fee payable by the person, or the amount of credit provided to the person. Appeals must be brought by filing a written notice with the board of appeal not later than the 60th day after the day the impact fee is determined and assessed. The notice of appeal may be filed in person or by certified mail or express mail and must state the reasons for the appeal. (R.C. 5755.11(B).)

Upon receiving a written notice of appeal, the board of appeal must notify the governing board if the governing board is not the board of appeal, must schedule a hearing on the appeal within 45 days after that receipt, and must notify the appellant of the hearing's time and place. The appellant may be represented by an attorney or other representative, and may present evidence, at the hearing. The hearing is to be considered a meeting under the Open Meetings Law. (R.C. 5755.11(B).)

The board of appeal may affirm, modify, or reverse the imposition of the fee, its amount, the amount payable by the appellant, or the amount of credit provided to the appellant. It must issue a final decision in writing within 90 days after the final hearing on the matter and must send a copy of the decision by ordinary mail to all parties to the appeal within 15 days after its issuance. The appellant may appeal that decision to the court of common pleas. (R.C. 5755.11(B).)

### Special funds

For each development area in which an impact fee is imposed, the governing board imposing it must create a fund to which all proceeds from the fee are credited. And, if a fee is imposed in a development area for *both a project improvement and a system improvement*, the governing board must create a separate fund for project improvements and for system improvements. If more than one project improvement or system improvement in an area is to be financed by an impact fee, the governing board may create a separate fund for each of the project or system improvements. Finally, if securities are issued, the governing board must create a separate fund for each project improvement or system improvement to be financed with the proceeds from the issuance. (R.C. 5755.07.)

Money in any of these funds may be spent solely for the purpose for which the fund was created and cannot be transferred or borrowed for any other purpose. If any unspent or unencumbered balance remains in a fund after project or system improvement costs (as applicable) have been paid in full, and if the governing board determines that refund of the remaining balance is impractical, the governing board may provide for the remaining balance to be credited to the county's, township's, or school district's special fund for permanent improvements. A resolution authorizing that credit must be adopted at a regular meeting of the governing board after due notice is provided to the public that the resolution will be considered. (R.C. 5755.07.)

### Securities

A governing board imposing an impact fee may issue securities in anticipation of its collection. The aggregate principal amount of the securities cannot exceed 90% of the amount of the fee imposed. These securities are not general obligations of the county, township, or school district issuing them, and the governing board cannot pledge to the payment of the debt charges on the securities any receipts other than those from the impact fee. These securities generally must be issued pursuant to the Uniform Public Securities Law, and they are not to be considered in calculating the net indebtedness of a county or a school district. (R.C. 133.06(D)(8), 133.07(C)(20), and 5755.09.)

If a governing board issues securities, impact fee proceeds are deemed to be pledged and appropriated first to the payment of debt charges on the securities, and the board must appropriate those proceeds first to the payment of those debt charges. The following rules also apply to the securities (R.C. 5755.09):

- They cannot include any amount to pay financing costs.
- Interest payable on them cannot be payable from their proceeds.

- Their interest rate cannot exceed the maximum or minimum average annual interest rate per annum determined by the political subdivision in the issuing proceedings (R.C. 9.95--not in, but referenced by, the bill).
- The securities, their transfer, the interest or other accreted amounts on them, and any profit made on their sale, exchange, or other disposition are free from taxation within the state.
- Their maximum maturity cannot exceed the estimated life or period of usefulness of the capital facility to be financed with proceeds from the issuance as estimated by the governing board's fiscal officer, and in no case more than 30 years.

**Failure to build improvements--refund of impact fees**

If, within ten years after the effective date of an imposed impact fee, construction of a project improvement to be financed with the fee has not commenced or the proceeds from the fee are not encumbered by a contract for construction of the project improvement, all proceeds from the fee generally must be refunded not later than 90 days after the day that is ten years after that effective date. But, if securities have been issued in anticipation of the fee's collection, the proceeds cannot be refunded until payment of all debt charges on the securities has been made or otherwise provided for in a manner preserving and securing the rights of holders of the securities and satisfying the covenant and pledge of the securities. (R.C. 5755.10.)

The refund of an impact fee must be apportioned among the parcels of taxable real property situated wholly or partly in the development area in which the fee was imposed in proportion to the taxable value of each such parcel according to the most recently certified tax list of real and public utility property. If a parcel is located partly in the development area, the part of the refund apportioned to the parcel must bear the same ratio to the entire parcel's taxable value as the area of the parcel situated within the development area bears to the area of the entire parcel. Refunds so apportioned are payable to the person that is the owner of record of each such parcel on the day that is ten years after the impact fee's effective date. (R.C. 5755.10.)

When a refund is required, the governing board generally must publish notice of the refund in a newspaper of general circulation in the county, township, or school district *twice* within four weeks before issuing the refund. This notice must state the reason for and the manner of apportioning the refund. (R.C. 5755.10.)

The refund notice also can be published by electronic means, including by posting it on the governing board's Internet web site. If the refund notice is published on that web site, publication of the notice in a newspaper of general circulation is required only once, but that publication must be made four weeks before the refund is issued, include a statement that the notice is posted on the governing board's web site, and indicate the web site's Internet address and instructions describing how the notice may be accessed on the web site. (R.C. 5755.10.)

A person entitled to a refund *cannot be required* to make application for the refund as a condition of receiving it. Refunds payable to persons that cannot be located within one year may be disposed of in the same manner as an unspent or unencumbered balance remaining in an impact fee fund. (R.C. 5755.10.)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-14-05	p. 949

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