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# Impact Fees

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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# Impact Fees

## Public Acts of 1988 Chapter 1022

**SECTION 1.** This act shall be known and may be cited as the "Tennessee Cooperative Public Facilities Financing Act."

**SECTION 2.** It is the intent and purpose of this act to:

- (1) Authorize local government to finance public facilities through the imposition of fair share fees on new growth and development;
- (2) Provide a mechanism for a local government to charge and collect fees from development in order to finance public facilities needed to serve said development;
- (3) Define the procedural and substantive requirements for fair share impact fees for capital costs of public facilities which are provided for in an element of a local government general plan;
- (4) Ensure consistent administration of fair share impact fees;
- (5) Promote effective comprehensive planning and capital budgeting by authorizing the use of fair share impact fees;
- (6) Clarify requirements of local government fair share impact fee programs and thereby create a stable and predictable environment in which to equitably and efficiently administer fair share impact fee programs.

**SECTION 3.** As used in this act, the term:

- (1) "Benefit district" means a geographic area in which public facilities are of particular benefit to development within the area.
- (2) "Capital Improvements Budget" means a program of proposed capital expenditures for the ensuing fiscal year and at least the next four (4) fiscal years thereafter, updated and adopted yearly by the local government governing body.
- (3) "Development" means any construction or expansion of a building or structure, any change in the use of a building or structure, or any land use change that affects a local government's need for public facilities.
- (4) "Developer" means any person, corporation, organization, or other legal entity undertaking development.
- (5) "Discount rate" means the interest rate, expressed in terms of percentage per annum, which is utilized to adjust past or future financial or monetary payments to present value.
- (6) "Exactions" means a condition or requirement attached to a development approval which compels the payment, dedication or contribution of goods, services, land or money to a public or quasi-public entity.
- (7) "General plan" means a plan adopted pursuant to Tennessee Code Annotated, Sections 13-3-301 and 13-4-201, or pursuant to Section 6 of Chapter 162 of the Private Acts of 1921, Section 3 of Chapter 706 of the Private Acts of 1935, or any similar private act.
- (8) "Governing body" means the legislative body of the local government, however designated.
- (9) "Impact fee" or "fair share impact fee" means a charge imposed upon development by local government to pay for a proportionate share of the public facilities required to serve said development.
- (10) "Local government" means any county, municipality or metropolitan government established pursuant to law which is authorized to prepare, adopt and implement a general plan. "Local government" shall not mean any utility district created pursuant to Section 7-52-101 et seq., or any private act.
- (11) "Off site improvements" means public facilities that are planned and designed to provide services to the general public, in contrast to on site improvements, which are necessary to provide safe and/or efficient access for a specific development. The character of an improvement shall control in determining whether an improvement is an on site or off site improvement, and the location of the improvement on site or off site shall not be determinative.
- (12) "Present value" means the current value of past, present, or future payments which are

adjusted to a base period by a discount rate.

(13) "Proportionate share" means that share, or portion, of total public facility capital cost which is reasonably attributable to or caused by an individual development.

(14) "Public facilities" means capital improvements for roadways, sanitary sewer, storm water management and flood control, and potable water which have a life expectancy of three (3) or more years.

(15) "Public facilities capital costs" means capital costs associated with the project planning, design, and construction of new or expanded publicly owned facilities and equipment which have a life expectancy of three (3) or more years, and the land acquisition, land improvement, design, and engineering related thereto. Such costs do not include routine and periodic maintenance expenditures, personnel training, or other operating costs.

(16) "Roadways" shall mean right-of-way acquisition, road, road approaches and road shoulder construction, construction of curbs, gutters and sidewalks, landscaping of roads and road rights-of-way and traffic signal installation and synchronization.

#### **SECTION 4.**

(a) Local governments of the state of Tennessee may assess, impose, levy, and collect fair share impact fees for new development within their jurisdictional limits only pursuant to the requirements set forth in this act. Local governments may not assess, impose, levy, or collect a fair share impact fee unless the local government has adopted a capital improvements budget for the construction of public facilities for which the impact fee is collected or unless such local government has entered into a binding co-operative agreement to make any fees collected available to the agency or government that has an established construction program for the category of improvements.

(b) Fair share impact fees may be imposed only for one or more public facilities which are categorically identified in a local government general plan element which meets the requirements of Tennessee Code Annotated, Sections 13-3-301 and 13-4-201 or pursuant to Section 6 of Chapter 162 of the Private Acts of 1921, Section 3 of Chapter 706 of the Private Acts of 1935, or any similar private act and in the Capital Improvements Budget.

(c) In any county or in counties having a Metropolitan form of government and having municipalities which retained the jurisdiction to issue building permits, that county or metropolitan government shall identify the public facilities capital improvements located within such municipality and to be funded by that county or metropolitan government. From and after the time that such county or metropolitan government adopts an impact fee ordinance including the public facilities required to serve any new development within such municipality, the municipality shall not issue any building permit or use and occupancy permit until the required impact fee is paid to that county or metropolitan government and such payment is certified to the municipality. Any permits issued by such municipality to that county or metropolitan government in the amount of the impact fee plus the statutory rate of annual interest calculated from the date of the issuance of the permit. This section does not preclude any municipality within a county or metropolitan government from adopting an impact fee ordinance in accordance with this act for those public facility capital improvements required and funded by such municipality.

**SECTION 5.** In the event a local government adopts a fair share impact fee ordinance, pursuant to this act, the local government shall not require the construction of, or payment in lieu thereof (exaction), any off-site public facilities as a condition of development approval except according to a fair share impact fee program adopted pursuant to the provisions of this act.

#### **SECTION 6.**

(a) An impact fee must meet the following standards:

(1) The cost of public facilities for which a fair share impact fee may be assessed, imposed, levied or collected, must be reasonably attributable or reasonably related to the service demands of the development which is assessed the fee;

(2) Fair share impact fees assessed, imposed, levied or collected from development must not exceed a proportionate share of the costs incurred or to be incurred by the local government in providing public facilities to development; and

(3) Fair share impact fees shall be used and expended to the benefit of the development that pays the fair share impact fee. In order to satisfy this requirement, the implementing ordinance or resolution must specifically contain the following provisions:

(A) Upon collection, fair share impact fees must be deposited in a trust fund which clearly identifies the type of public facility for which the fee was imposed, and fair share impact

fees must be invested with all interest accruing to the trust fund.

(B) Although local governments are not required to establish benefit districts if the local government is able to demonstrate that fair share impact fees are used and expended to the reasonable benefit of development that pays a fair share impact fee, any benefit districts which are established must be appropriate to the nature of the particular public facility and the nature of the local government jurisdiction. A local government must develop a rationale for the establishment of, or lack of establishment of, benefit districts which shall be reduced to writing and published at a public hearing.

(C) Except for recoupment provided in Section 6(b), fair share impact fees may not be collected from a development until public facilities, which bear a reasonable relationship to the needs created by the development, are included in at least a five (5) year local government capital improvements element as required by this act.

(D) Fair share impact fees collected must be encumbered for public facilities within five (5) years after the date of collection.

(E) If the fair share impact fees are not encumbered within five (5) years after the date of collection, a local government shall refund the amount of the fair share impact fee along with accrued interest on the amount of the fee at the average annual rate of interest earned by the trust fund during the five (5) year period to the owner of the property on which the fee was paid. For purposes of refunds, the owner of the property on which a fair share impact fee was paid is the owner of record at the time that the refund is paid. The owner of the property on which an impact fee has been paid has standing to sue for a refund under the provisions of this act; however, such action may only be commenced within one (1) year after the date the refund becomes due and payable.

(b) A local government may recoup through a fair share impact fee the costs of excess capacity in existing public facilities to the extent development is served by existing public facilities.

(c) A local government shall exempt from fair share impact fee programs all development that constitutes affordable housing to low income households as defined by the United States department of housing and urban development.

(d) A local government may exempt from fair share impact fee programs particular types and locations of development that is determined to serve an overriding public interest, provided that such exemptions are specified in the implementing ordinance or resolution.

## **SECTION 7.**

(a) A local government which desires to adopt a fair share impact fee ordinance or resolution shall first conduct a needs assessment for the type of public facility or public facilities for which the fair share impact fee is to be levied. The needs assessment must distinguish between existing deficiencies and new development needs and must contain components which inventory existing facilities, identify level of service standards for which the fee is to be levied, and the projected community needs. The needs assessment may be a separate document from an ordinance or resolution establishing a fair share impact fee. However, local governments shall use or base the needs assessment upon supporting data used to develop their general plan.

(b) The data sources and methodology upon which the assessment of the fair share impact fee is based must be made available to the public upon request.

(c) The amount of a fair share impact fee imposed shall be based upon actual public facilities capital costs or reasonable estimates of said capital costs for the expansion of public facilities to be incurred by the local government as a result of anticipated new development.

(d) In determining the total amount of funds a fair share impact fee ordinance or resolution seeks to raise, the local government shall reasonably provide for credits that reflect the present value of amounts that new development may have contributed to payments for the same capital improvement in the form of property taxes, gasoline taxes, capacity fees, tap-on fees, user fees, and any other contribution, payment, construction, or dedication of land accepted and received by the local government for any off-site public facilities. The determination of credits shall occur at the time of the calculation credits and the calculation of the amount of the fair share impact fee shall be reviewed and updated at least every two (2) years. The revised determination of credits and the amount of fair share impact fee may only be applied prospectively.

(e) The fair share impact fee ordinance or resolution must identify, for the type of facility covered by the fee, any existing deficiencies, based upon adopted level of service standards, and must describe how the local government intends to remedy the deficiency.

- (f) The amount of the fair share impact fee may not include the cost of remedying existing public facilities deficiencies.
- (g) The capital improvements element of the general plan shall list anticipated fair share impact fee revenues as a projected source of revenue along with the percentages of fair share impact fee dollars to be used for funding public facility capital improvements.
- (h) Nothing in this section shall be construed to prevent a local government from adopting by ordinance or resolution, a statement of intent to prepare, or a methodology for preparing a proposed fair share impact fee ordinance or resolution prior to the completion of a needs assessment, or the adoption of a level of service standard or a capital improvements budget.

**SECTION 8.**

- (a) All fair share impact fees imposed pursuant to this act shall be assessed in full at the time the building permit is issued and collected in full at the time of issuance of a certificate of occupancy or other final intended use of a structure or part thereof. Provided however, that the local government, at its option, may provide for payment of a fair share fee on an installment basis. All fair share impact fee ordinances shall require that real estate closing documents involving a parcel of land or improvements thereon for which a fair share impact fee has been assessed or paid within five (5) years of the closing, shall include a written notification of the fact that a fair share impact fee has been assessed and/or paid and the location of a public office where information in regard to the rights and obligations arising from the assessment and/or payment of the fee can be obtained.
- (b) No fair share impact fee ordinance or resolution shall assess, impose, levy, or collect a fair share impact fee on development for which a valid building permit was in full force and effect on the effective date of the ordinances or resolution, unless the local government shall have provided the holder of the permit written notice at the time the permit was issued that the development authorized by the permit would be liable for any fair share impact fees that are adopted prior to the issuance of a certificate of occupancy or other final use.

**SECTION 9.** Fair share impact fee ordinances or resolutions shall provide for an appeal from a determination of the fair share impact fee to be paid by any individual development to an appointed or elected body.

**SECTION 10.** If any section or specific provision or standard of this act is found by a court to be invalid for any reason, the decision of the court shall not affect the validity of any other section, provision or standard of this act except the provision in question. The other portions of this act not affected by the decision of the court shall remain in full force and effect.

**SECTION 11.** The provisions of this act shall not apply in any county having a population in excess of six hundred thousand (600,000), according to the 1980 Federal Census or any subsequent Federal Census.

**SECTION 12.** The provisions of this act shall not apply in counties having a population of

<u>not less than</u>	<u>nor more than</u>
27,900	27,920
26,400	26,500
19,650	19,725

according to the 1980 Federal Census of population or any subsequent Federal Census.

**SECTION 13.** This act shall only apply to any county having a metropolitan form of government and having a population in excess of four hundred fifty thousand (450,000), according to the 1980 Federal Census or any subsequent Federal Census.

**SECTION 14.** This act shall only apply to any county having a metropolitan form of government and having a population in excess of four hundred fifty thousand (450,000), according to the 1980 Federal Census or any subsequent Federal Census.

**SECTION 15.** The provisions of this act shall take effect upon becoming a law, the public welfare requiring it.

Passed: April 26, 1988.

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