

House Bill 1230

By: Representatives Lindsey of the 54th, Jones of the 46th, and Geisinger of the 48th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 36 of the Official Code of Georgia Annotated, relating to local government,
2 so as to change certain provisions in the "Georgia Development Impact Fee Act"; to change
3 definitions; to increase community participation in development impact fee advisory
4 committees; to provide for the expenditure of impact fees; to correct cross-references; to
5 provide for related matters; to provide for an effective date; to repeal conflicting laws; and
6 for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
10 by striking Chapter 71, relating to the "Georgia Development Impact Fee Act," and inserting
11 in lieu thereof the following:

12 "36-71-1.

13 (a) This chapter shall be known and may be cited as the 'Georgia Development Impact Fee
14 Act.'

15 (b) The General Assembly finds that an equitable program for planning and financing
16 public facilities needed to serve new growth and development is necessary in order to
17 promote and accommodate orderly growth and development and to protect the public
18 health, safety, and general welfare of the citizens of the State of Georgia. It is the intent
19 of this chapter to:

20 (1) Ensure that adequate public facilities are available to serve new growth and
21 development;

22 (2) Promote orderly growth and development by establishing uniform standards by
23 which municipalities and counties may require that new growth and development pay a
24 proportionate share of the cost of new public facilities needed to serve new growth and
25 development;

1 (3) Establish minimum standards for the adoption of development impact fee ordinances
2 by municipalities and counties; and

3 (4) Ensure that new growth and development is required to pay no more than its
4 proportionate share of the cost of public facilities needed to serve new growth and
5 development and to prevent duplicate and ad hoc development exactions.

6 36-71-2.

7 As used in this chapter, the term:

8 (1) 'Capital improvement' means an improvement with a useful life of ten years or more,
9 by new construction or other action, which increases the service capacity of a public
10 facility.

11 (2) 'Capital improvements element' means a component of a comprehensive plan adopted
12 pursuant to Chapter 70 of this title which sets out projected needs for system
13 improvements during a planning horizon established in the comprehensive plan, a
14 schedule of capital improvements that will meet the anticipated need for system
15 improvements, and a description of anticipated funding sources for each required
16 improvement.

17 (3) 'Comprehensive plan' has the same meaning as provided for in Chapter 70 of this
18 title.

19 (4) 'Developer' means any person or legal entity undertaking development.

20 (5) 'Development' means any construction or expansion of a building, structure, or use,
21 any change in use of a building or structure, or any change in the use of land, any of
22 which creates additional demand and need for public facilities.

23 (6) 'Development approval' means any written authorization from a municipality or
24 county which authorizes the commencement of construction.

25 (7) 'Development exaction' means a requirement attached to a development approval or
26 other municipal or county action approving or authorizing a particular development
27 project, including but not limited to a rezoning, which requirement compels the payment,
28 dedication, or contribution of goods, services, land, or money as a condition of approval.

29 (8) 'Development impact fee' means a payment of money imposed upon development as
30 a condition of development approval to pay for a proportionate share of the cost of
31 system improvements needed to serve new growth and development.

32 (9) 'Encumber' means to legally obligate by contract or otherwise commit to use by
33 appropriation or other official act of a municipality or county.

34 (10) 'Fee payor' means that person who pays a development impact fee or his successor
35 in interest where the right or entitlement to any refund of previously paid development
36 impact fees which is required by this chapter has been expressly transferred or assigned

1 to the successor in interest. In the absence of an express transfer or assignment of the
 2 right or entitlement to any refund of previously paid development impact fees, the right
 3 or entitlement shall be deemed 'not to run with the land.'

4 ~~(10.1)~~(11) 'Governmental entity' means any water authority, water and sewer authority,
 5 or water or waste-water authority created by or pursuant to an Act of the General
 6 Assembly of Georgia.

7 ~~(11)~~(12) 'Level of service' means a measure of the relationship between service capacity
 8 and service demand for public facilities in terms of demand to capacity ratios or the
 9 comfort and convenience of use or service of public facilities or both.

10 ~~(12)~~(13) 'Present value' means the current value of past, present, or future payments,
 11 contributions or dedications of goods, services, materials, construction, or money.

12 ~~(13)~~(14) 'Project' means a particular development on an identified parcel of land.

13 ~~(14)~~(15) 'Project improvements' means site improvements and facilities that are planned
 14 and designed to provide service for a particular development project and that are
 15 necessary for the use and convenience of the occupants or users of the project and are not
 16 system improvements. The character of the improvement shall control a determination
 17 of whether an improvement is a project improvement or system improvement and the
 18 physical location of the improvement on site or off site shall not be considered
 19 determinative of whether an improvement is a project improvement or a system
 20 improvement. If an improvement or facility provides or will provide more than incidental
 21 service or facilities capacity to persons other than users or occupants of a particular
 22 project, the improvement or facility is a system improvement and shall not be considered
 23 a project improvement. No improvement or facility included in a plan for public facilities
 24 approved by the governing body of the municipality or county shall be considered a
 25 project improvement.

26 ~~(15)~~(16) 'Proportionate share' means that portion of the cost of system improvements
 27 which is reasonably related to the service demands and needs of the project within the
 28 defined service area.

29 ~~(16)~~(17) 'Public facilities' means:

30 (A) Water supply production, treatment, and distribution facilities;

31 (B) Waste-water collection, treatment, and disposal facilities;

32 (C) Roads, streets, and bridges, including rights of way, traffic signals, landscaping,
 33 and any local components of state or federal highways;

34 (D) Storm-water collection, retention, detention, treatment, and disposal facilities,
 35 flood control facilities, and bank and shore protection and enhancement improvements;

36 (E) Parks, open space, and recreation areas and related facilities;

1 (F) Public safety facilities, including police, fire, emergency medical, and rescue
2 facilities; and

3 (G) Libraries and related facilities.

4 ~~(17)~~(18) 'Service area' means a limited geographic area defined by a ~~municipality,~~
5 ~~county, or intergovernmental agreement in which a defined set of public facilities provide~~
6 ~~service to development within the area. Service areas shall be designated on the basis of~~
7 ~~sound planning or engineering principles or both~~ the actual distance from the new
8 development project to the nearest public facility within the jurisdiction collecting the
9 development impact fee, forming a concentric circle around the new development project,
10 correlating to the appropriate public facilities.

11 ~~(18)~~(19) 'System improvement costs' means costs incurred to provide additional public
12 facilities capacity needed to serve new growth and development for planning, design and
13 construction, land acquisition, land improvement, design and engineering related thereto,
14 including the cost of constructing or reconstructing system improvements or facility
15 expansions, including but not limited to the construction contract price, surveying and
16 engineering fees, related land acquisition costs (including land purchases, court awards
17 and costs, attorneys' fees, and expert witness fees), and expenses incurred for qualified
18 staff or any qualified engineer, planner, architect, landscape architect, or financial
19 consultant for preparing or updating the capital improvement element, and administrative
20 costs, provided that such administrative costs shall not exceed 3 percent of the total
21 amount of the costs. Projected interest charges and other finance costs may be included
22 if the impact fees are to be used for the payment of principal and interest on bonds, notes,
23 or other financial obligations issued by or on behalf of the municipality or county to
24 finance the capital improvements element but such costs do not include routine and
25 periodic maintenance expenditures, personnel training, and other operating costs.

26 ~~(19)~~(20) 'System improvements' means capital improvements that are public facilities
27 and are designed to provide service to the community at large, in contrast to 'project
28 improvements.'

29 36-71-3.

30 (a) Municipalities and counties which have adopted a comprehensive plan containing a
31 capital improvements element are authorized to impose by ordinance development impact
32 fees as a condition of development approval on all development pursuant to and in
33 accordance with the provisions of this chapter. After the transition period provided in this
34 chapter, development exactions for other than project improvements shall be imposed by
35 municipalities and counties only by way of development impact fees imposed pursuant to
36 and in accordance with the provisions of this chapter.

1 (b) Notwithstanding any other provision of this chapter, that portion of a project for which
2 a valid building permit has been issued prior to the effective date of a municipal or county
3 development impact fee ordinance shall not be subject to development impact fees so long
4 as the building permit remains valid and construction is commenced and is pursued
5 according to the terms of the permit.

6 (c) Payment of a development impact fee shall be deemed to be in compliance with any
7 municipal or county requirement for the provision of adequate public facilities ~~or services~~
8 in regard to the system improvements for which the development impact fee was paid.

9 36-71-4.

10 (a) A development impact fee shall not exceed a proportionate share of the cost of system
11 improvements, as defined in this chapter.

12 (b) Development impact fees shall be calculated and imposed on the basis of service areas.

13 (c) Development impact fees shall be calculated on the basis of levels of service for public
14 facilities that are adopted in the municipal or county comprehensive plan that are applicable
15 to existing development as well as the new growth and development.

16 (d) A municipal or county development impact fee ordinance shall provide that
17 development impact fees shall be collected not earlier in the development process than the
18 issuance of a building permit authorizing construction of a building or structure; provided,
19 however, that development impact fees for public facilities described in subparagraph (D)
20 of paragraph ~~(16)~~(17) of Code Section 36-71-2 may be collected at the time of a
21 development approval that authorizes site construction or improvement which requires
22 public facilities described in subparagraph (D) of paragraph ~~(18)~~(16) of Code Section
23 36-71-2.

24 (e) A municipal or county development impact fee ordinance shall include a schedule of
25 impact fees specifying the development impact fee for various land uses per unit of
26 development on a service area by service area basis. The ordinance shall provide that a
27 developer shall have the right to elect to pay a project's proportionate share of system
28 improvement costs by payment of development impact fees according to the fee schedule
29 as full and complete payment of the development project's proportionate share of system
30 improvement costs.

31 (f) A municipal or county development impact fee ordinance shall be adopted in
32 accordance with the procedural requirements of Code Section 36-71-6.

33 (g) A municipal or county development impact fee ordinance shall include a provision
34 permitting individual assessments of development impact fees at the option of applicants
35 for development approval under guidelines established in the ordinance.

- 1 (h) A municipal or county development impact fee ordinance shall provide for a process
2 whereby a developer may receive a certification of the development impact fee schedule
3 or individual assessment for a particular project, which shall establish the development
4 impact fee for a period of 180 days from the date of certification.
- 5 (i) A municipal or county development impact fee ordinance shall include a provision for
6 credits in accordance with the requirements of Code Section 36-71-7.
- 7 (j) A municipal or county development impact fee ordinance shall include a provision
8 prohibiting the expenditure of development impact fees except in accordance with the
9 requirements of Code Section 36-71-8.
- 10 (k) A municipal or county development impact fee ordinance may provide for the
11 imposition of a development impact fee for system improvement costs previously incurred
12 by a municipality or county to the extent that new growth and development will be served
13 by the previously constructed system improvements.
- 14 (l) A municipal or county development impact fee ordinance may exempt all or part of
15 particular development projects from development impact fees if:
- 16 (1) Such projects are determined to create extraordinary economic development and
17 employment growth or affordable housing;
- 18 (2) The public policy which supports the exemption is contained in the municipality's
19 or county's comprehensive plan; and
- 20 (3) The exempt development's proportionate share of the system improvement is funded
21 through a revenue source other than development impact fees.
- 22 (m) A municipal or county development impact fee ordinance shall provide that
23 development impact fees shall only be spent for the category of system improvements for
24 which the fees were collected and in the service area in which the project for which the fees
25 were paid is located.
- 26 (n) A municipal or county development impact fee ordinance shall provide that, in the
27 event a building permit is abandoned, credit shall be given for the present value of the
28 development impact fee against future development impact fees for the same parcel of
29 land.
- 30 (o) A municipal or county development impact fee ordinance shall provide for a refund
31 of development impact fees in accordance with the requirements of Code Section 36-71-9.
- 32 (p) A municipal or county development impact fee ordinance shall provide for appeals
33 from administrative determinations regarding development impact fees in accordance with
34 the requirements of Code Section 36-71-10.
- 35 (q) Development impact fees shall be based on actual system improvement costs or
36 reasonable estimates of such costs.

1 (r) Development impact fees shall be calculated on a basis which is net of credits for the
2 present value of revenues that will be generated by new growth and development based on
3 historical funding patterns and that are anticipated to be available to pay for system
4 improvements, including taxes, assessments, user fees, and intergovernmental transfers.

5 36-71-5.

6 (a) Prior to the adoption of a development impact fee ordinance, a municipality or county
7 adopting an impact fee program shall establish a Development Impact Fee Advisory
8 Committee.

9 (b) Such committee shall be composed of not less than five nor more than ten members
10 appointed by the governing authority of the municipality or county and at least ~~40~~ 50
11 percent of the membership shall be representatives from the development, building, or real
12 estate ~~industries~~ industry. An existing planning commission or other existing committee
13 that meets these requirements may serve as the Development Impact Fee Advisory
14 Committee.

15 (c) The Development Impact Fee Advisory Committee shall serve in an advisory capacity
16 to assist and advise the governing body of the municipality or county with regard to the
17 adoption of a development impact fee ordinance. In that the committee is advisory, no
18 action of the committee shall be considered a necessary prerequisite for municipal or
19 county action in regard to adoption of an ordinance.

20 36-71-6.

21 Prior to the adoption of an ordinance imposing a development impact fee pursuant to this
22 chapter, the governing body of a municipality or county shall cause two duly noticed public
23 hearings to be held in regard to the proposed ordinance. The second hearing shall be held
24 at least two weeks after the first hearing.

25 36-71-7.

26 (a) In the calculation of development impact fees for a particular project, credit shall be
27 given for the present value of any construction of improvements or contribution or
28 dedication of land or money required or accepted by a municipality or county from a
29 developer or his or her predecessor in title or interest for system improvements of the
30 category for which the development impact fee is being collected. Credits shall not be
31 given for project improvements.

32 (b) In the event that a developer enters into an agreement with a county or municipality
33 to construct, fund, or contribute system improvements such that the amount of the credit
34 created by such construction, funding, or contribution is in excess of the development

1 impact fees which would otherwise have been paid for the development project, the
2 developer shall be reimbursed for such excess construction, funding, or contribution from
3 development impact fees paid by other development located in the service area which is
4 benefited by such improvements.

5 36-71-8.

6 (a) An ordinance imposing development impact fees shall provide that all development
7 impact fee funds shall be maintained in one or more interest-bearing accounts. Accounting
8 records shall be maintained for each category of system improvements and the service area
9 in which the fees are collected. Interest earned on development impact fees shall be
10 considered funds of the account on which it is earned and shall be subject to all restrictions
11 placed on the use of development impact fees under the provisions of this chapter.

12 (b) Expenditures of development impact fees shall be made only for the category of system
13 improvements and in the service area for which the development impact fee was imposed
14 as shown by the capital ~~improvement~~ improvements element and as authorized by this
15 chapter. Development impact fees shall not be used to pay for any purpose that does not
16 involve system improvements that create additional service available to serve new growth
17 and development. Expenditures of development impact fees shall begin to be utilized for
18 specific project improvements within two years of collection of such fees.

19 (c) As part of its annual audit process, a municipality or county shall prepare an annual
20 report describing the amount of any development impact fees collected, encumbered, and
21 used during the preceding year by category of public facility and service area.

22 36-71-9.

23 Any municipality or county which adopts a development impact fee ordinance shall
24 provide for refunds in accordance with the following provisions:

25 (1) Upon the request of an owner of property on which a development impact fee has
26 been paid, a municipality or county shall refund the development impact fee if capacity
27 is available and service is denied or if the municipality or county, after collecting the fee
28 when service is not available, has failed to encumber the development impact fee or
29 commence construction within six years after the date that the fee was collected. In
30 determining whether development impact fees have been encumbered, development
31 impact fees shall be considered encumbered on a first-in, first-out (FIFO) basis;

32 (2) When the right to a refund exists due to a failure to encumber development impact
33 fees, the municipality or county shall provide written notice of entitlement to a refund to
34 the feepayor who paid the development impact fee at the address shown on the
35 application for development approval or to a successor in interest who has given notice

1 to the municipality or county of a transfer or assignment of the right or entitlement to a
 2 refund and who has provided a mailing address. Such notice shall also be published
 3 within 30 days after the expiration of the six-year period after the date that the
 4 development impact fees were collected and shall contain the heading 'Notice of
 5 Entitlement to Development Impact Fee Refund';

6 (3) An application for a refund shall be made within one year of the time such refund
 7 becomes payable under paragraph (1) or (2) of this Code section or within one year of
 8 publication of the notice of entitlement to a refund under this Code section, whichever
 9 is later;

10 (4) A refund shall include a refund of a pro rata share of interest actually earned on the
 11 unused or excess development impact fee collected;

12 (5) All refunds shall be made to the feepayor within 60 days after it is determined by a
 13 municipality or county that a sufficient proof of claim for a refund has been made; and

14 (6) The feepayor shall have standing to sue for a refund under the provisions of this
 15 chapter if there has been a timely application for a refund and the refund has been denied
 16 or has not been made within one year of submission of the application for refund to the
 17 collecting municipality or county.

18 36-71-10.

19 (a) A municipality or county which adopts a development impact fee ordinance shall
 20 provide for administrative appeals to the governing body or such other body as designated
 21 in the ordinance of a determination of the development impact fees for a particular project.

22 (b) A developer may pay a development impact fee under protest in order to obtain a
 23 development approval or building permit, as the case may be. A developer making such
 24 payment shall not be estopped from exercising the right of appeal provided by this chapter,
 25 nor shall such developer be estopped from receiving a refund of any amount deemed to
 26 have been illegally collected.

27 (c) A municipality or county development impact fee ordinance may provide for the
 28 resolution of disputes over the development impact fee by binding arbitration through the
 29 American Arbitration Association or otherwise.

30 36-71-11.

31 Municipalities and counties which are jointly affected by development are authorized to
 32 enter into intergovernmental agreements with each other, with authorities, or with the state
 33 for the purpose of developing joint plans for capital improvements or for the purpose of
 34 agreeing to collect and expend development impact fees for system improvements, or both,
 35 provided that such agreement complies with any applicable state laws.

1 36-71-12.

2 This chapter shall not repeal any existing laws authorizing a municipality or county to
3 impose fees or require contributions or property dedications for capital improvements;
4 provided, however, that all local ordinances or resolutions imposing development exactions
5 for system improvements on April 4, 1990, shall be brought into conformance with this
6 chapter no later than November 30, 1992.

7 36-71-13.

8 (a) Nothing in this chapter shall prevent a municipality or county from requiring a
9 developer to construct reasonable project improvements in conjunction with a development
10 project.

11 (b) Nothing in this chapter shall be construed to prevent or prohibit private agreements
12 between property owners or developers and municipalities, counties, or other governmental
13 entities in regard to the construction or installation of system improvements and providing
14 for credits or reimbursements for system improvement costs incurred by a developer,
15 including interproject transfers of credits or providing for reimbursement for project
16 improvement costs which are used or shared by more than one development project.

17 (c) Nothing in this chapter shall limit a municipality, county, or other governmental entity
18 which provides water or sewer service from collecting a proportionate share of the capital
19 cost of water or sewer facilities by way of hook-up or connection fees as a condition of
20 water or sewer service to new or existing users, provided that the development impact fee
21 ordinance of a municipality or county or other governmental entity that collects
22 development impact fees pursuant to this chapter shall include a provision for credit for
23 such hook-up or connection fees collected by the municipality or county to the extent that
24 such hook-up or connection fee is collected to pay for system improvements. Imposition
25 of such hook-up or connection fees by any governmental entity to pay for system
26 improvements either existing or new shall be consistent with the capital ~~improvement~~
27 improvements element of the comprehensive plan and shall be subject to the approval of
28 each county, municipality, or combination thereof which appoints the governing body of
29 such entity. The adoption, imposition, collection, and expenditure of such fees for system
30 improvements by any governmental entity shall be subject to the same procedures
31 applicable to the adoption, imposition, collection, and expenditure of development impact
32 fees by a county.

33 (d) Nothing in this chapter shall apply to a water authority created by Act of the General
34 Assembly, as long as such authority is not established as a political subdivision of the State
35 of Georgia but instead acts subject to the approval of a county governing authority."

1 **SECTION 2.**

2 This Act shall become effective on July 1, 2006.

3 **SECTION 3.**

4 All laws and parts of laws in conflict with this Act are repealed.