

The House Committee on Governmental Affairs offers the following substitute to HB 232:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 71 of Title 36 of the Official Code of Georgia Annotated, relating to the  
2 "Georgia Development Impact Fee Act," so as to change definitions; to increase community  
3 participation in development impact fee advisory committees; to provide for the expenditure  
4 of impact fees; to change certain provisions relating to deposit and expenditure of fees and  
5 an annual report; to correct cross-references; to provide for related matters; to provide for an  
6 effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 71 of Title 36 of the Official Code of Georgia Annotated, relating to the "Georgia  
10 Development Impact Fee Act," is amended in Code Section 36-71-2, relating to definitions,  
11 by revising paragraphs (10.1) through (19) as follows:

12 ~~"(10.1)~~(11) 'Governmental entity' means any water authority, water and sewer authority,  
13 or water or waste-water authority created by or pursuant to an Act of the General  
14 Assembly of Georgia.

15 ~~(11)~~(12) 'Level of service' means a measure of the relationship between service capacity  
16 and service demand for public facilities in terms of demand to capacity ratios, ~~or~~ the  
17 comfort and convenience of use or service of public facilities, ~~or~~ both.

18 ~~(12)~~(13) 'Present value' means the current value of past, present, or future payments,  
19 contributions or dedications of goods, services, materials, construction, or money.

20 ~~(13)~~(14) 'Project' means a particular development on an identified parcel of land.

21 ~~(14)~~(15) 'Project improvements' means site improvements and facilities that are planned  
22 and designed to provide service for a particular development project and that are  
23 necessary for the use and convenience of the occupants or users of the project and are not  
24 system improvements. The character of the improvement shall control a determination  
25 of whether an improvement is a project improvement or system improvement and the  
26 physical location of the improvement on site or off site shall not be considered

1 determinative of whether an improvement is a project improvement or a system  
 2 improvement. If an improvement or facility provides or will provide more than incidental  
 3 service or facilities capacity to persons other than users or occupants of a particular  
 4 project, the improvement or facility is a system improvement and shall not be considered  
 5 a project improvement. No improvement or facility included in a plan for public facilities  
 6 approved by the governing body of the municipality or county shall be considered a  
 7 project improvement.

8 ~~(15)~~(16) 'Proportionate share' means that portion of the cost of system improvements  
 9 which is reasonably related to the service demands and needs of the project within the  
 10 defined service area.

11 ~~(16)~~(17) 'Public facilities' means:

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

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

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

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

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

19 (F) Public safety facilities, including police, fire, emergency medical, and rescue  
 20 facilities; and

21 (G) Libraries and related facilities.

22 ~~(17)~~(18) 'Service area' means a geographic area defined by a municipality, county, or  
 23 intergovernmental agreement in which a defined set of public facilities provide service  
 24 to development within the area. Service areas shall be designated on the basis of sound  
 25 planning or engineering principles or both.

26 ~~(18)~~(19) 'System improvement costs' means costs incurred to provide additional public  
 27 facilities capacity needed to serve new growth and development for planning, design and  
 28 construction, land acquisition, land improvement, design and engineering related thereto,  
 29 including the cost of constructing or reconstructing system improvements or facility  
 30 expansions, including but not limited to the construction contract price, surveying and  
 31 engineering fees, related land acquisition costs (including land purchases, court awards  
 32 and costs, attorneys' fees, and expert witness fees), and expenses incurred for qualified  
 33 staff or any qualified engineer, planner, architect, landscape architect, or financial  
 34 consultant for preparing or updating the capital improvement element, and administrative  
 35 costs, provided that such administrative costs shall not exceed 3 percent of the total  
 36 amount of the costs. Projected interest charges and other finance costs may be included  
 37 if the impact fees are to be used for the payment of principal and interest on bonds, notes,

1 or other financial obligations issued by or on behalf of the municipality or county to  
 2 finance the capital improvements element but such costs do not include routine and  
 3 periodic maintenance expenditures, personnel training, and other operating costs.

4 ~~(19)~~(20) 'System improvements' means capital improvements that are public facilities  
 5 and are designed to provide service to the community at large, in contrast to 'project  
 6 improvements.'"

## 7 SECTION 2.

8 Said chapter is further amended in Code Section 36-71-4, relating to calculation of fees, by  
 9 revising subsection (d) as follows:

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

## 18 SECTION 3.

19 Said chapter is further amended in Code Section 36-71-5, relating to hearings on proposed  
 20 fee ordinances, by revising subsection (b) as follows:

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

## 26 SECTION 4.

27 Said chapter is further amended by revising Code Section 36-71-8, relating to deposit and  
 28 expenditure of fees and an annual report, as follows:

29 "36-71-8.

30 (a) An ordinance imposing development impact fees shall provide that all development  
 31 impact fee funds shall be maintained in one or more interest-bearing accounts. Accounting  
 32 records shall be maintained for each category of system improvements and the service area  
 33 in which the fees are collected. Interest earned on development impact fees shall be  
 34 considered funds of the account on which it is earned and shall be subject to all restrictions

1 placed on the use of development impact fees under the provisions of this chapter. The  
 2 accounting records shall include the following information:

3 (1) The accounting records to be maintained shall specify the address of each property  
 4 which paid development impact fees, the amount of fees paid in each category in which  
 5 fees were collected, and the date that such fees were paid; and

6 (2) As to any exemptions granted, the accounting records to be maintained shall specify  
 7 the address of each property for which exemptions were granted, the reason for which  
 8 such exemption was granted, and the revenue source from which the exempt  
 9 development's proportionate share of the system improvements is to be paid.

10 (b) Expenditures of development impact fees shall be made only for the category of system  
 11 improvements and in the service area for which the development impact fee was imposed  
 12 as shown by the capital improvement improvements element and as authorized by this  
 13 chapter. Development impact fees shall not be used to pay for any purpose that does not  
 14 involve system improvements that create additional service available to serve new growth  
 15 and development.

16 (c)(1) Development impact fees, collected for roads, streets, bridges, including rights of  
 17 way, traffic signals, landscaping, or any local components of state or federal highways,  
 18 shall be expended to fund, in whole or in part, system improvement projects:

19 (A) That have been identified in the capital improvements element of the  
 20 municipality's or county's comprehensive development plan; and

21 (B) That are chosen by a municipality or county after consideration of the following  
 22 factors:

23 (i) The proximity of the proposed system improvements to developments within the  
 24 service area which have generated development impact fees collected for roads,  
 25 streets, bridges, including rights of way, traffic signals, landscaping, or any local  
 26 components of state or federal highways; and

27 (ii) The proposed system improvements which will have the greatest effect on level  
 28 of service for roads, streets, bridges, including rights of way, traffic signals,  
 29 landscaping, or any local components of state or federal highways impacted by the  
 30 developments which have paid such impact fees.

31 (2) Where the expenditure of development impact fees paid by a development is  
 32 allocated to system improvements in the general area of such development, through an  
 33 agreement between the municipality or county and the developer and such agreement is  
 34 approved by the governing body, the analysis required by subparagraph (B) of  
 35 paragraph (1) of this subsection shall not be applicable.

36 (d) As part of its annual audit process, a municipality or county shall prepare an annual  
 37 report describing the amount of any development impact fees collected, encumbered, and

1 used during the preceding year by category of public facility and service area. The portion  
2 of the annual report relating to development impact fees collected for roads, streets,  
3 bridges, including rights of way, traffic signals, landscaping, or any local components of  
4 state or federal highways shall be referred to the municipality's or county's most recently  
5 constituted Development Impact Fee Advisory Committee which shall report to the  
6 governing body of the municipality or county any perceived inequities in the expenditure  
7 of impact fees collected for roads, streets, bridges, including rights of way, traffic signals,  
8 landscaping, or any local components of state or federal highways."

9 **SECTION 5.**

10 This Act shall become effective on July 1, 2007.

11 **SECTION 6.**

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