

House Bill 232 (AS PASSED HOUSE AND SENATE)

By: Representatives Lindsey of the 54th, Lunsford of the 110th, Geisinger of the 48th, Jones of the 46th, and Smith of the 113th

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 under certain circumstances; to change certain provisions relating to deposit
5 and expenditure of fees and an annual report; to correct cross-references; to provide for
6 related matters; to provide for an effective date; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

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

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

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

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

21 ~~(13)~~(14) 'Project' means a particular development on an identified parcel of land.

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

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

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

12 ~~(16)~~(17) 'Public facilities' means:

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

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

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

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

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

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

22 (G) Libraries and related facilities.

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

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

1 if the impact fees are to be used for the payment of principal and interest on bonds, notes,
 2 or other financial obligations issued by or on behalf of the municipality or county to
 3 finance the capital improvements element but such costs do not include routine and
 4 periodic maintenance expenditures, personnel training, and other operating costs.

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

8 SECTION 2.

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

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

19 SECTION 3.

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

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

27 SECTION 4.

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

30 "36-71-8.

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

1 considered funds of the account on which it is earned and shall be subject to all restrictions
 2 placed on the use of development impact fees under the provisions of this chapter. The
 3 accounting records shall include the following information:

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

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

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

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

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

22 (B) That are chosen by a municipality after consideration of the following 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 and the developer and such agreement is approved
 34 by the governing body, the analysis required by subparagraph (B) of paragraph (1) of this
 35 subsection shall not be applicable.

36 (3) The provisions of this subsection shall only apply to municipalities that have more
 37 than 140,000 parcels of land.

1 (d)(1) As part of its annual audit process, a municipality or county shall prepare an
2 annual report describing the amount of any development impact fees collected,
3 encumbered, and used during the preceding year by category of public facility and service
4 area.

5 (2) In municipalities that have more than 140,000 parcels of land, the portion of the
6 annual report relating to development impact fees collected for roads, streets, bridges,
7 including rights of way, traffic signals, landscaping, or any local components of state or
8 federal highways shall be referred to such municipality's most recently constituted
9 Development Impact Fee Advisory Committee which shall report to the governing body
10 of such municipality any perceived inequities in the expenditure of impact fees collected
11 for roads, streets, bridges, including rights of way, traffic signals, landscaping, or any
12 local components of state or federal highways."

13 **SECTION 5.**

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

15 **SECTION 6.**

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